S. HRG. 100-953

AMEND THE COMMUNICATIONS ACT OF 1934

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2657

TO AMEND SECTION 315 OF THE COMMUNICATIONS ACT OF 1934 WITH RESPECT TO THE PURCHASE OF BROADCASTING TIME BY CANDIDATES FOR PUBLIC OFFICE

SEPTEMBER 15, 1988

Printed for the use of the Committee on Commerce, Science, and Transportation

J261-21

U.S. GOVERNMENT PRINTING OFFICE

91-979 O WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BROCK ADAMS, Washington

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
PAUL S. TRIBLE, JR., Virginia
PETE WILSON, California
JOHN MCCAIN, Arizona

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON COMMUNICATIONS

DANIEL K. INOUYE, Hawaii, *Chairman*

ERNEST F. HOLLINGS, South Carolina
WENDELL H. FORD, Kentucky
ALBERT GORE, JR., Tennessee
J. JAMES EXON, Nebraska
JOHN F. KERRY, Massachusetts

BOB PACKWOOD, Oregon
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
PETE WILSON, California
JOHN MCCAIN, Arizona

CONTENTS

	Page
Opening statement by Senator Inouye	1
Opening statement by Senator Pressler	19
Text of S. 2657	2

LIST OF WITNESSES

McConnell, Hon. Mitch, U.S. Senator from Kentucky	3
Patrick, Hon. Dennis R., Chairman, FCC; accompanied by Milton Gross, Chief, Political Programming Branch, Mass Media Bureau	10
Squier, Robert D., partner, Squire/Eskew Communications	45
Tarleton, Cullie M., seniro vice president and general manager, WBTV-TV	21
Prepared statement	24

AMEND THE COMMUNICATIONS ACT OF 1934

THURSDAY, SEPTEMBER 15, 1988

U.S. SENATE,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D. C.

The subcommittee met, pursuant to notice, at 9:29 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Daniel Inouye (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Tom Cohen, staff counsel and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. This morning we are here to examine the state of the lowest unit rate provision of the Communications Act and to consider S. 2657, a bill introduced by Senator McConnell to alter this provision and the way by which broadcast stations charge for political advertisements.

The Communications Act currently requires that candidates for political office be charged the lowest unit rate available for the class of advertisement they seek to purchase.

The purpose of this requirement is to help ensure that the public has sufficient information upon which to base an electoral choice. The lowest unit rate provision represents an effort to balance this interest with the broadcasters' interest in receiving fair value for the use of their facilities.

Recently, there have been charges that in some campaigns the spirit and the letter of the lowest unit rate have not been followed for all candidates.

It has also been alleged that the rates charged for political advertisements have varied widely from candidate to candidate.

S. 2657 is intended to resolve these concerns by only permitting broadcasters to charge candidates the lowest rate available for advertisements during the time period requested and prohibiting stations from preempting those ads.

Subsequent to the introduction of this bill, the FCC issued a public notice providing that the rule permits broadcasters to charge different rates for preemptible and nonpreemptible advertisements and that broadcasters can only charge the lowest unit rate for each class.

In addition, if an advertisement is preempted, the FCC stated that the station must air the ad as soon as possible and before the election.

[The bill follows:]

100TH CONGRESS
2D SESSION

S. 2657

To amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office.

IN THE SENATE OF THE UNITED STATES

JULY 26, 1988

Mr. MCCONNELL introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend section 315 of the Communications Act of 1934 with respect to the purchase of broadcasting time by candidates for public office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) in subsection (b)(1), by striking "class and";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting immediately after subsection (b) the following new subsection:

"(c) A licensee shall not preempt the use, during any period specified in subsection (b)(1), of a broadcasting station by a legally qualified candidate for public office who has purchased such use pursuant to the provisions of subsection (b)(1).".

Senator INOUYE. This morning we will hear from the author of this bill, Senator McConnell, and the FCC Chairman, Hon. Dennis Patrick.

In addition, Mr. Cullie Tarleton will present the viewpoint of the National Association of Broadcasters.

Finally, we will hear from Mr. Robert Squier, a media consultant who purchases time for political candidates.

If I may, I would now call upon my distinguished colleague, Senator McConnell.

Welcome, sir.

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM KENTUCKY

Senator MCCONNELL. Thank you, Mr. Chairman. I cannot tell you how much I appreciate your willingness to have a hearing on what I think is an aspect of the whole campaign finance issue on which we might be able to achieve bipartisan agreement.

I do not have to remind my colleagues, Senator Danforth, Senator Stevens, and yourself, that we had some magnificent shoot-outs over the last year and a half, almost to the point of physical violence, over the question of how we structure the rules of elections in this country.

There are some deep-seated philosophical differences of opinion about whether or not we ought to have limits on participation, spending limits, or not, and just which way we ought to go in this business of informing the voters of this country in the electoral process.

Clearly, if you look at what has happened over the last eight or ten years, campaigns increasingly rely on broadcast advertising to get their message across. In some of our larger States, you could shake hands all day through three or four lifetimes and never meet everyone in the State.

So, clearly, in almost all of our States, television and radio are the only ways to go if you are going to be able meaningfully to communicate with the people.

And so, the question becomes at what price are we allowed to communicate.

Just last June, the Center for Responsive Politics published a monograph pointing out that, from 1978 to 1986, the total cost of House and Senate campaigns more than doubled, from $194 million to $450 million.

However, that fact, by itself, does not tell us much about the real problem or the appropriate remedy.

The far more important fact that we should be paying attention to is that most of the increase in campaign spending is due to an increased reliance by candidates on television to communicate their views to the public, and the skyrocketing cost of broadcast advertising.

In the same four election cycles that campaign spending doubled, the expense for television advertising more than tripled.

From my own experience, in any state-wide race, where there is serious competition, the cost of TV advertising eats up at least half and as much as three-quarters of all monies spent in a campaign. Even by the most conservative estimates—and we will probably hear some conservative estimates later this morning—the increase in spending for broadcast advertising time alone accounts for over 40 percent of the overall increase in campaign spending from 1978 to 1986.

Now, of course, the broadcast industry is a business, and we should not deny it the right to make a profit. But it is a business like no other, because its very existence depends on a granted right from the Federal Government: an exclusive license to use a particular notch on the public airwaves, which is given away for free.

Ever since Congress first divided up the broadcast spectrum and begin issuing licenses in 1934, it recognized the principle that a license does not confer ownership, but only custodianship over a small share of the public's domain.

Since broadcast licenses are not rented or sold to the highest bidder, Congress always has insisted that broadcasters faithfully serve the public interest, even at some incurred expense, in return for the profit from this powerful and lucrative resource.

In 1971, Congress acted to reduce overall spending in campaigns by requiring broadcasters to give political candidates a discount on advertising time. That initial legislation, however, has been riddled with loopholes and is becoming virtually irrelevant as a result of changes in the way broadcasters sell advertising time.

In addition, most candidates need to buy nonpreemptible, secured time slots, which are available only at a premium time, where the discount law provides no relief.

Another troubling aspect of the current law is that candidates do not always have a way of knowing whether they are being treated equally in relation to other candidates. One lawsuit is pending right now, which alleges that a station charged one candidate an extremely high price for nonpreemptible time, while it sold the cheapest level of preemptible time to its favored candidate, and never allowed those spots to be preempted.

One complaint raised in this lawsuit is that neither the candidate nor the public has access to certain broadcaster records that might disclose whether the broadcaster discriminated against one candidate.

Two months ago, I introduced a preliminary measure to address the erosion of the lowest unit charge discount mandated by law. This bill, the "Campaign Broadcast Discount Act," clarified the intent of the law by stating that preemptible time cannot be subdivided into further separate classes of time.

Since I introduced this proposal, the FCC indicated it will work with broadcasters on an administrative level to enforce the original intent of the lowest unit charge provision and insure that adequate records are provided to all candidates.

Now I believe it is necessary for Congress to go a step further in securing the original intent of the law, and take a giant step forward in reducing the cost of political campaigns.

The bill I subsequently introduced, the one upon which we are having the hearing today, is called the "Campaign Cost Reduction Act." It is a very simple proposal to give candidates nonpreemptible, fixed time at the lowest unit rate charged for any time in that same time period.

In other words, whatever a broadcaster charges for the cheapest type of preemptible time on a particular show will be the rate stipulated for political candidates; but the candidates will get the nonpreemptible time for the money they pay.

I am certain that broadcasters will sharply oppose this measure, although I do want to hear their comments today.

As I said, they are businesses and have a right to make a profit.

But, again, I remind their colleagues that their profit is derived from a public resource. Moreover, it is extremely important for everyone to note that all political advertising accounts for only three-quarters of one percent—three-quarters of one percent—of the broadcasters' total revenue.

So, in effect, what we are asking for here is a break that affects only three-fourths of one percent of their total revenue.

The lucrative Federal grant of a notch on the broadcast spectrum certainly is worth that much.

Finally, this bill is a vital part of the campaign finance reform effort that a lot of us have worked on over the last couple of years. We are not going to reduce overall campaign spending simply by erecting an arbitrary limit. We have tried that in the presidential system, and it has been as successful as Prohibition was in drying up alcohol.

Spending in presidential races currently is increasing at over twice the rate of spending in the Congressional system, which has no spending limits. This is because over half the money now spent in presidential races is outside the legal limits, and much of it is unreported and unaccounted for.

An arbitrary spending limit is like putting a rock on jello: it presses down in the middle and everything just oozes out the sides.

This is what we have done in the presidential system, and we have a mess of jello all over the place.

Instead of that, we ought to address the cost of campaigns—and that is what this is about today, the cost of campaigns—as a way of reducing campaign spending and the burden of fund raising. Obviously, if it costs less, we would not spend as much time raising money.

The most effective way of doing that is to provide a meaningful discount rate on the largest cost component of campaigns: broadcast advertising time.

Mr. Chairman, I look forward to hearing the testimony of the other witnesses, and I would be more than happy to respond to any questions that any of you may have.

Senator INOUYE. Thank you.

Senator Danforth.

Senator DANFORTH. Senator McConnell, it is true that an enormous portion of what a candidate spends in a major election is buying television time. The allegation has been made in some past campaigns that the television stations are able to classify different degrees of preemptibility or whether the time is preemptible or not, charge different rates, depending on the degree of preemptibility, and basically wink at the favored candidate and say "well, you are not going to be preempted," and, by the same token, threaten the nonfavored candidate and say "well, you might be preempted unless you pay the highest rate."

Is this, to your knowledge, a problem?

Are there cases or could there be cases in which one candidate is charged three, four, or five times as much as his competitor, just by using a kind of adroit shuffling of what is preemptible and what is not preemptible?

Senator MCCONNELL. I would say, Senator Danforth, that, under the current system, the potential for that kind of abuse is enormous. It would be very difficult, I think, to prove what had happened.

It seems to me that one of the virtues of the approach that I am recommending today, in addition to lowering the cost of the largest component of campaigns, is that it would be much easier to enforce. I mean, if a candidate is entitled to nonpreemptible time at preemptible rates, it is simple. It is understandable, and everybody would know exactly what the rule is.

I think it would be much more difficult for a broadcaster, if he were so inclined, to try to favor one candidate over another.

The rule would be fairly easily understood—a simple, certain result.

I think this would go a long way toward eliminating that potential.

Senator DANFORTH. What is your understanding of the meaning of "lowest unit rate?"

Senator MCCONNELL. My understanding of the meaning of "lowest unit rate" is on these scales—and we are going to hear from the broadcasters; we can have them try to explain them—the lowest unit rate, in my mind, would be what they are charging for preemptible time.

Again, bear in mind that we are talking about only 60 days before the fall election and 45 days before the primary. Campaigns advertise at other times, and during those other times this break would not be available.

Candidates would get nonpreemptible time, fixed slots, during these periods, for the price that was being charged to any advertiser during that period for preemptible time, the lowest cost time.

It gives the candidates a break.

But, on the other hand, as I said, at the risk of being redundant, we are talking here about a percentage of broadcast advertising revenue that is three-quarters of one percent.

Senator DANFORTH. Congress has already established a lowest unit rate rule.

Now let's suppose that under the present set of circumstances, Candidate A is running against Candidate B, and for the same time slot Candidate A is charged X and Candidate B is charge 2X.

Is there any possible interpretation of the meaning of "lowest unit rate"' which could justify that kind of discrepancy, where one candidate is charged twice as much for the same time as the other candidate?

Senator MCCONNELL. I don't think so.

Senator DANFORTH. Could that, under your interpretation of the law, as Congress intended it to be, could that possibly be within the meaning of "lowest unit rate?"

Senator MCCONNELL. I don't think that could be the meaning under the current regulation or law.

Senator DANFORTH. So what you are saying is that we should clarify this situation, clarify the meaning of Congress.

Senator MCCONNELL. I think we should clarify it. I think that this, provided people did not cheat, would obviously provide a real, meaningful discount for the campaigns, and it would simplify the process.

Senator DANFORTH. Let me ask you another question. You may or may not know this answer, and maybe I will ask one of our expert witnesses.

Let's take a heavy advertiser on television, say, General Motors. Does a heavy advertiser, somebody like General Motors, typically pay a premium to the television station so as not to be preempted?

Senator MCCONNELL. I don't know the answer to that. I think that is something that we ought to ask the broadcasters about.

Senator DANFORTH. Let's suppose that they do not pay a premium but, because they are such good customers, such regular customers, they are really certain that they are not going to be preempted.

Senator MCCONNELL. My guess is that a good customer, like McDonald's, is not going to be too worried about how he is going to be treated.

Senator DANFORTH. Let's suppose that, in point of fact, they are just not preempted. They are very good customers. They pay the lowest unit rate. They are heavy volume buyers. They are not going to be booted out of their time slot.

Do you think that, under that circumstance, to charge a political candidate a premium, so as to be assured of not being preempted, is within the meaning of "lowest unit rate" or not within the meaning of "lowest unit rate?'

Senator MCCONNELL. I don't know whether it is or not, but it is certainly outrageous.

Senator DANFORTH. It would seem to me to be clearly contrary to the meaning of "lowest unit rate" if McDonald's is assured, as a practical matter, that it is not going to be preempted.

Senator MCCONNELL. Sure.

Senator DANFORTH. It has bought the slot. It is too good a customer to be ousted from its slot, and it is charged one rate, and then the candidate is told well, you are not as good a customer as McDonald's is or as GM is, and, therefore, we are going to charge you a premium.

It would seem to me, obviously, that that is not within the meaning of "lowest unit rate.'

Senator MCCONNELL. It certainly is not.

I think it is important to remember that the nature of a political campaign is essentially also different from selling automobiles or hamburgers.

I doubt that many commercial advertisers have the same mandate that we have, to get in a particular slot at a particular time because, in the campaign business, on one day you either make the sale or you don't.

I doubt if very many commercial advertisers have that same kind of problem. Not many of these things have to be done on one day.

So, we may hear that an awful lot of them are perfectly willing to have nonpreemptible time. You know, if it is a big advertiser, he is saturating the airwaves anyway, and there isn't any one time when it is over. They may well, a lot of them, be willing to accept preemptible time.

But that is not good enough in the typical competitive political campaign. If you want a slot, if it is three weeks before the election and you want to be on right before "Sixty Minutes,' you want to be on right before "Sixty Minutes.' That is critical.

I think that that is why more and more campaigns, as a practical matter, buy nonpreemptible time, because it is all going to be over on one day. They get no break because they are buying, in effect, the highest cost time. The broadcasters will say well, you don't have to buy the highest cost time. You can buy something else.

Well, our "hamburgers' are not going to be sold after Election Day.

Senator DANFORTH. Do you see any way of avoiding at least the possibility or the appearance of television stations weighing-in in favor of one candidate versus the other if there are even two classifications of time, preemptible and nonpreemptible?

Do you see any possibility of avoiding the likelihood of favoritism by a television station saying to one candidate hey, I can really guarantee you that you are not going to be preempted, you can pay the lower rate, and then going to the other candidate and saying well, I can't really be so sure about this, you'd better pay twice as much?

Senator MCCONNELL. I don't think it is possible to construct a foolproof system.

Senator DANFORTH. But under the present system, it invites that, doesn't it?

Senator MCCONNELL. Absolutely. It invites it. It makes it very easy. It makes it extremely difficult to prove that you got nailed.

The approach that I am recommending today has, in addition to the potential for real saving in the cost of campaigns, the element of simplicity, in terms of being able to enforce it and for everybody to understand what the rules are.

Senator DANFORTH. Thank you.

Senator INOUYE. Senator Stevens.

Senator STEVENS. I have the unfortunate background of having, in my prior life, advised a great many of our people in Alaska in the television business, and I always told them that the "lowest unit rate" meant the lowest unit rate. The preemptible concept seems to me to be in violation of the statute as it exists.

Why do we need legislation at all?

Senator MCCONNELL. All I can say to my friend from Alaska is that, as a practical matter, I am unfamiliar with any markets that do not have the preemptible option. The way the current law is working is that the candidates run that risk all the time. Unless they pay nonpreemptible prices, they are going to get bumped by somebody who is willing to pay more.

Senator STEVENS. The act does not say anything about preemptibility. It says that the "candidate is entitled to the lowest unit rate," period.

Senator MCCONNELL. But that is being interpreted as to not necessarily guarantee him, the candidate, the slot; that to get the slot guaranteed—as a practical matter, that is the way it is working out.

Senator STEVENS. What we really need, then, you believe, is legislation to say that we did not say "preemptibility," to just eliminate preemptibility as far as the lowest unit rate. Is that what you are saying?

Senator MCCONNELL. I think we need legislation that gives us nonpreemptible time at preemptible rates. It is a break, and it is a guarantee that you are going to have your spot in a certain slot.

Senator STEVENS. Thank you.

Senator INOUYE. Senator McConnell, in a capsule, are you proposing a one-rule, one-class, one-rate bill?

Senator MCCONNELL. Yes.

I think that what my bill would do would be to give the candidate during this timeframe of 60 days before the general and 45 days before the primary the opportunity to buy nonpreemptible time at preemptible time rates, which is a meaningful discount for a guaranteed slot.

I repeat, even though I am sure we will hear later that this is somehow an egregious bill, that is going to take away a lot of profit, the total amount of percentage of the broadcast advertising revenue that comes from political campaigns is three-quarters of one percent.

So, Mr. Chairman, all we are arguing for here is for a little give on that three-quarters of one percent of total advertising revenue from political campaigns.

Senator INOUYE. So your proposal is to avoid confusion and potential abuse.

Senator MCCONNELL. It avoids confusion and also it really will, I think, lower the cost of campaigns.

Senator INOUYE. I thank you very much, sir.

Senator MCCONNELL. Thank you.

Senator INOUYE. Please join us here at the dias.

Senator MCCONNELL. Thank you very much.

Senator STEVENS. Mr. Chairman, I have to leave. Might I say something?

Senator INOUYE. Yes.

Senator STEVENS. I am reminded that the amendment that is going to be discussed is an amendment that I offered on the floor concerning a rate charged for the same class of time.

I remember specifically discussing that. That was the time slot concept, rather than a class of preemptible versus nonpreemptible, that we were discussing.

I still believe that we meant the same class of time in terms of the time spectrum, and not a class of time created by whether it was preemptible or nonpreemptible.

It seems to me that this has gotten very, very esoteric in terms of the interpretation of what was the intent of Congress. And, if it has gotten that far out of hand, I agree with Senator McConnell that we have to clarify it.

I'm sorry, but I do have to go to another Committee.

Senator INOUYE. Thank you.

Our next witness is the Chairman of the Federal Communications Commission, Hon. Dennis Patrick.

Mr. Chairman, welcome, sir.

STATEMENT OF HON. DENNIS R. PATRICK, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY MILTON GROSS, CHIEF, POLITICAL PROGRAMMING BRANCH, MASS MEDIA BUREAU

Mr. PATRICK. Thank you, Mr. Chairman.

It is a pleasure to be here.

I have a short opening statement, if I might make it, Mr. Chairman.

Senator DANFORTH. Would you please move the microphone a bit closer and speak right into it.

Mr. PATRICK. Certainly.

I am pleased to appear before you today to discuss S. 2657, the Campaign Cost Reduction Act, introduced by Senator McConnell.

Testifying with me this morning and we are privileged to have Mr. Milton Gross, the Chief of the Political Programming Branch of our Mass Media Bureau.

Mr. Gross is responsible for overseeing enforcement of the present Section 315 on a day-to-day basis and is, therefore, a leading expert on the issues which are the subject of today's hearing.

I might also add that the Commission is very privileged indeed to have Mr. Gross in its service because he has been working in this area for at least 15 years. And so, he is, as I have said, quite expert with respect to these questions and I think will be a very useful addition to our discussion this morning.

Under current law, candidates must be charged the lowest unit rate of a broadcast station, or a cable television system, when it originates programming, for the same class and amount of time for the same period during the 60 days before a general election and the 45 day period before a primary.

Simply stated, when calculating the lowest unit charge, candidates are entitled to all discounts that are offered to the station's most favored commercial advertiser for the same class and amount of time for the same period, without regard to the number of ads purchased by the candidate.

In enforcing this provision we, of course, follow the terms of Section 315(b) and the Congressional intent with respect to that statute, as manifested in the legislative history.

The lowest unit charge provision was part of an original plan to give candidates for public office greater access to the media at affordable prices.

The requirement was limited to the specified 45 and 60 day preelection periods to encourage shorter campaigns and lower campaign costs. It was the Congressional intent, as we read it, to place the candidate on a par with the station's most favored commercial advertisers.

This year, as we do each election season, the Commission has received a number of inquiries regarding the lowest unit charge provision. These questions were prompted in part by the multiple buying options available to candidates and commercial buyers alike in today's high tech advertising market.

For example, with the advent of computerized sales practices, stations were able to offer preemptible time spots at various price levels and degrees of preemptibility. Such practices raised questions of what constituted a "class" of time for purposes of the lowest unit charge computation.

In response, the Commission issued a public notice on August 4, 1988, as has been referenced by you, Mr. Chairman, reminding broadcasters and cable operators of their political programming obligations, including their obligation to charge candidates the lowest unit charge for the commercial spots purchased in the preelection season and their obligation to maintain a political file containing a complete record of all requests, airings, and the charges for political airtime.

A copy of that notice is attached to my prepared statement.

The notice was intended to emphasize the importance which the Commission establishes to these statutory obligations by reminding broadcasters and cablecasters that failure to comply with these require-

ments may result in severe sanctions and to clarify the manner in which the lowest unit charge should be calculated.

The notice makes two major points with respect to the application of the lowest unit charge provision to current industry advertising sales practices.

First, the commission recognizes that stations offer two basic classes of time to advertisers: fixed and preemptible.

Second, the Commission concludes that preemptible time should be treated as a single class of time for purposes of the lowest unit charge computation. Thus, the lowest unit charge for preemptible time is the lowest price any advertiser has paid for a preemptible spot that actually cleared to air in a particular time period.

Where time is preempted, normal industry practice is to make good that spot by placing it at another, usually later, time, but frequently in close proximity to the original purchase.

Since candidates are to be treated like the station's most favored advertiser, if a station makes good preempted spots for a commercial advertiser, it must provide similar make-goods to political candidates.

That point was clarified in our notice, as well.

That reduces the risk to candidates who buy the lower priced preemptible time.

Moreover, the Commission concluded that "make-goods" for political spots must air before the election if the licensee--if the licensee—would so treat its most favored commercial advertiser when time was of the essence for the commercial buyer's advertisement.

S. 2657 would amend Section 315(b)(1), as we know, and as the Senator indicated, by striking the reference to "class' and by adding a new subsection which prohibits licensees from preempting a candidate's advertisement.

If enacted, that legislation would entitle candidates to purchase fixed time at the lowest unit rate charged for any class of time, typically the preemptible time, with the assurance that that spot would not be preempted.

This legislation would eliminate consideration of what constitutes a "class" of time when calculating the lowest unit charge. It would also eliminate consideration of a station's make-good policies in calculating a lowest unit charge, since there would be no need for make-goods.

Should the Congress pass that legislation, the Commission would promptly issue a notice to broadcasters and cable operators informing them of these new obligations.

That concludes my opening remarks, Mr. Chairman. Thank you for inviting us to appear before you.

We will be happy to answer any questions you may have.

Senator INOUYE. Thank you, Mr. Chairman.

I would like now to call upon the author of the measure, Senator McConnell, to begin the questioning.

Senator MCCONNELL. Thank you.

Mr. Patrick, how frequently do you get complaints from candidates regarding the current law and how it is being applied to them out in the field?

Mr. PATRICK. Senator, during the election period and the period leading up to the election period, the immediate election period, we receive a very large number of inquiries. Some of them are in the nature of complaints. Some of them are in the nature of requests for clarification of the law.

I do not have a precise breakdown as to the number of those inquiries or complaints that are from candidates. But I can tell you generally that during this period of time, we are receiving, or I should say Mr. Gross and his shop are receiving anywhere from 50 to 75 telephone calls a day, making inquiries in this area.

Senator MCCONNELL. How are you able to investigate these? Or are you?

Mr. PATRICK. In many cases, it requires only that we clarify the law and explain how we interpret these provisions to the party that is calling. Where an investigation is necessary, the persons involved at the Commission will make inquiry to the broadcast facility. Sometimes a phone call is sufficient; sometimes it requires further followup.

We can, and do when necessary, request that the station provide us with information so that we can investigate as to whether or not there has been a violation of the station's obligations.

Senator MCCONNELL. Presumably, by the time all of that happened, though, the election would be over. Right?

Mr. PATRICK. Well, not necessarily, Senator. But that is a very good point.

We are quite aware of the fact that this is a time sensitive issue, to state the obvious. That is why most of our activity in this area is handled on an informal basis.

You are quite right that, if the Commission had to initiate a formal enforcement proceeding of some sort, that would take a great deal of time and probably the election would have passed.

It is for this reason that Mr. Gross and his people handle these inquiries on the phone, and where there appears to be a problem, they will simply pick up the phone and call the broadcaster and try to work the problem out.

The vast majority of cases are handled in that way, and, therefore, the vast majority of those problems are dealt with as best we can before the election.

Senator MCCONNELL. Has there been an increase in the number of calls? Are the candidates more willing to call you up now? You say that you have been doing this for 15 years.

I am curious as to whether there has been a sort of steady level of complaints or whether there has been an increase.

Mr. GROSS. This year there has been a significant increase, I think most were trying to understand or seek clarification of our public notice.

This did result in a change in classification of the way we handle these complaints, because, prior to our public notice, the practice of the industry had been changing. We recognize that. As a result of our study, we issued the public notice.

That has generated quite a number of inquiries and complaints.

Senator McCONNELL. Let me ask you this.

Aside from the obvious savings to political candidates from my bill, would it simplify your life and your job?

Mr. GROSS. Well, by doing away with class and preemptibility and make-goods, it would simplify the enforcement of the statute, yes.

Senator McCONNELL. Everybody would understand the rules better, right?

Mr. GROSS. I hope so.

Senator McCONNELL. And in those situations where you did have to get into proof, would it simplify that as well, proving a violation of the standard?

Mr. GROSS. Well, the Commission operates in many areas, including this area, on a complaint basis. It is up to a person who wishes to file a complaint to at least give us some evidence that a violation has taken place.

Once that evidence is in, we investigate it.

Senator McCONNELL. How do they get it?

Mr. GROSS. Pardon?

Senator McCONNELL. How do they get the evidence? How do they prove it?

If you are the plaintiff in one of these situations, how do you make your case? Do you just go down to the station and say how about giving me your records?

Mr. GROSS. Well, basically, under the present statute, they have to have some reason for believing what they believe, and that is all we need to know. Why do they believe that they are not receiving the lowest unit charge?

In many instances, the station's commercial practices are known to many people, including competitors, ad agencies, and a lot of times candidates themselves employ ad agencies who also purchase commercial time on that very station. Those ad agencies will know if the candidate is getting the lowest unit charge, for example.

Senator McCONNELL. Thank you, Mr. Chairman. I will come back.

Senator INOUYE. Senator Danforth.

Senator DANFORTH. Mr. Chairman, I first would like to say that I am told by not only the members of the committee staff but by other people who have dealt with the FCC in these matters that Mr. Gross is highly professional and just does an outstanding job.

In fact, I am told, Mr. Gross, by your admirers, that there is no time, day or night, when people can call the FCC close to an election when they cannot get you on the phone. So I am not sure that you sleep.

But I want you to know that you have really an outstanding reputation by people who deal with the agency.

Let me follow up now on Senator McConnell's line of questions.

Do you have the resources necessary to enforce the rules of the FCC relating to the lowest unit rate or other election policing under the statutes?

Mr. GROSS. Yes. We are able to keep up with the flow of complaints and inquiries with very little problems.

Senator DANFORTH. Would it be beneficial for a more systematic auditing job to be done, maybe after the election, to find out exactly what is going on in the stations?

Mr. GROSS. I really could not say.

Mainly, my job is to enforce what is already there. But to speculate, I really could not, at this point.

Senator DANFORTH. It would just seem to me that what we are talking about here is so basic to the workings of our democracy that, whatever the laws are, it would seem to me that they would be very thoroughly enforced. While I am told that you really do an outstanding job, I would think that we would want to be satisfied that all the resources that are necessary for a very, very thorough job of auditing and finding out what is going on are made available.

If you have some thoughts in that regard, or Chairman Patrick, I think we would be interested in them, and in what resources should be made available to the Commission for the purpose of monitoring the enforcement of the law.

Mr. PATRICK. Senator Danforth, I certainly agree with you that this is a very important area. It is known and obvious to us all that we have resource problems. We are trying to fulfill a very wide mandate at the Commission with limited resources.

This is an area in which, as we indicated before, in my dialogue with Senator McConnell, is necessarily time sensitive. And so, I think probably the most effective and useful enforcement activities are precisely those sorts of activities which are pursued at the time of the election and immediately prior to the election in the necessarily somewhat informal way that Mr. Gross and his people do handle those matters.

I do not want to suggest, however, that there is never any followup. We have had formal complaint and enforcement proceedings that have been initiated and pursued in this area, and those more formal procedures do transcend the election period and are taken to a conclusion after the election period.

Senator DANFORTH. Chairman Patrick, I now want to turn to the question of classes.

As I understand the Commission's public notice, you have done away with degrees of preemptibility, but you have still left two classes. One is preemptible time and the other is fixed time.

I am going to read a paragraph from your public notice: "Nonpreemptible fixed rate spots are frequently offered to political candidates only. These rates are higher than prevailing preemptible rates because they guarantee the airing of a spot at a particular time. They are often published at the beginning of the preelection period in what is

known as a 'political rate card.' To avoid the vagaries of preemption, political candidates often choose to pay the higher nonpreemptible rate."

Now, I take it that tnat paragraph is right at the core of what we are talking about.

You heard Senator Stevens in his views on the meaning of his amendment. I would only say, and then would ask you for your thoughts on this, that to say in a public notice that nonpreemptible fixed rate spots are frequently offered to political candidates only and that there is something known as a political rate card creates a special category, which is specifically recognized in this public notice, that flatly contradicts the whole concept of lowest unit rate.

I do not understand how the Commission can state the existence of a political rate card and apparently ratify it in this document, and how it can say that there are nonpreemptible fixed rate spots offered to political candidates only without ratifying a special classification of time and of rates applicable only to political candidates in flat contradiction to the lowest unit rate rule.

Mr. PATRICK. Senator Danforth, I am familiar with the fact that that paragraph has given rise to a number of questions. So let me clarify the intention and the meaning and our approach to the issue that you identify.

There is not a separate category of time for political candidates. That language attempts to or I should say takes cognizance of the fact that in the marketplace, it is typically, it is often the case, that only candidates will buy a fixed time. The only parties that are interested in buying nonpreemptible time are candidates.

Commercial buyers will typically purchase instead the preemptible time.

Therefore, this parlance has developed and is used in broadcasting circles, which makes reference to this political rate card.

That paragraph was an attempt to explain, in fact, that there is no separate category for candidates and that the charge for fixed time must be the charge that would be paid by the most favored commercial buyer for fixed time.

Senator DANFORTH. But nobody pays it. Therefore, you say in your notice that this is offered—offered—to political candidates only; the higher rate is offered to political candidates only.

How can it conceivably be possible that a higher rate is offered exclusively to political candidates and have that comport with the concept of lowest unit rate?

Mr. PATRICK. I don't think that there is a problem here as long as the candidates have the option of buying preemptible time.

What we are simply saying is that if they choose to, which they are not required to do, but if they choose to, owing to the obvious exigencies and concerns of the campaign, buy fixed time, that that fixed time has to be sold at the rate which would be paid by the most favored commercial buyer if that commercial buyer chose to buy fixed time.

Getting back to this question and my original point, I do not think there is a problem here insofar as the candidate has the option of buying preemptible time if they so choose.

Senator DANFORTH. All right.

Why is it, then, that fixed time is not, in fact, sold to commercial advertisers?

Mr. PATRICK. Let me ask Mr. Gross to comment on this. But I think the answer is that it is available to commercial buyers. It is just that they typically do not buy it.

Senator DANFORTH. This says that it is frequently offered to political candidates only.

Why wouldn't it be offered to commercial buyers?

Why wouldn't McDonald's be offered this?

I think the reason for this is that McDonald's, or GM, or Ford, or Proctor and Gamble, whoever, the very heavy commercial buyers, really know they are not going to be preempted. What is pernicious about having this classification which, as a practical matter, only applies to political campaigns are the following two things.

One is that it is a higher rate that is being paid, in fact, by politicians than what is paid by commercial advertisers.

Secondly, while the commercial advertiser knows he is not going to be bumped, the station can play all these games with the politician and particularly play games in, you know, the worst case, where the politician is not of the favored persuasion, and they'll say well, we really can't be sure about you, so you'd better buy the fixed rate.

I really think that this concept of a fixed rate, which is on something known as a political rate card, for two reasons is absolutely contrary to the concept of lowest unit rate and also very damaging to the whole idea of fair elections.

Mr. PATRICK. Let me ask Milt to comment on this. But, before I do, let me respond by saying that I think there are two sets of questions here which your questions, your comments implicate.

The first is the statute which we, the FCC, are attempting to enforce and were attempting to clarify with that notice. The statute, as you know, requires that the lowest unit charge be charged for a given class of time, and the statute itself makes this distinction among classes. It is the lowest unit charge for the given class of time.

Senator DANFORTH. Which Senator Stevens says means "time slot," not degree of preemptibility.

Mr. GROSS. Well, our public notice of 1972, when the statute first came out, defined "class of time" as a rate category, because the statute talks about class of time for the same period of time.

But period of time includes prime time, drive time, and other concepts during the broadcast day, including individual programs.

Senator DANFORTH. Well, obviously we have done something wrong in the statute, which has to be fixed, because that was not Senator Stevens' understanding, and he was the author of the amendment.

Mr. PATRICK. Then that is a problem.

There has been some litigation in this area as to the matter of classes. But the point I was going to make earlier is we are attempting to clarify and to fulfill the intent of the statute with respect to this matter of classes.

In the commercial marketplace, we have observed this, and I think it is the case that there are at least two categories of time that are offered, that are available, let's put it that way: fixed and preemptible time.

It is typically the case that no one, other than candidates, will avail themselves of fixed time. This is the point of your question.

I said there were two sets of issues here. The second set of issues has to do with the matter of discrimination, which your question implicates as well.

If, in fact, there is discrimination taking place by the broadcaster, which is to say that the commercial buyers are being offered effective guarantees when they buy preemptible times which is not offered to a candidate unless they buy fixed, then I think we would have a discrimination problem. We would have a problem with equal opportunity.

Senator DANFORTH. But it would be unenforceable, wouldn't it? Well, if not enforceable, it would be really extremely difficult because it would be done by winks and by nods and by passive understandings, and even between candidates. It could be "hey, Joe, I really like you. You are my kind of candidate, so don't buy the fixed rate. You know, I mean, you are not going to be bumped."

And then the other candidate comes through the door and you say to him "you know, I mean, the Olympics are on, and the World Series and oh, this is really tough, and if you really want to lock it in, you'd better buy the fixed time."

Mr. PATRICK. Senator, I am not going to sit here and tell you that there are not proof problems. There are difficult proof problems in this area.

Senator DANFORTH. What is the difference typically in the cost between fixed and preemptible?

How heavy would the thumb on the scale be here?

Mr. GROSS. We've seen it three and four times the preemptible rate. We just had an informal case where the preemptible rate was $350 and the fixed rate was over $800.

That is generally what it is. Sometimes it is very high. Other times, it comes close to the highest preemptible rate.

Senator DANFORTH. But in one case it was $350 to $800. In some cases three to four.

So, if you had a station that wanted to "buffalo" one candidate, it would be a very, very substantial thing.

You know, I think we have taken two different positions in Congress that are pretty clear. One is that, as far as Federal elections are concerned, we don't want corporate contributions to campaigns. It really amounts to a corporate contribution and a very large corporate contribution if one candidate is being charged twice as much or three or four times as much for the same commodity.

The second thing is we have taken the position that we want fairness in coverage and we also want nondiscrimination and availability of time for purchasers.

To me, the distinction between fixed and preemptible, when commercial buyers are not going to buy fixed, and when the difference is this large, is absolutely contrary to these basic statutes and fundamental policies of a democracy.

Mr. GROSS. The only court case involving lowest unit charge, a Court of Appeals case, the *Hernstadt* ase, said that Congress did not want candidates to get fixed time at preemptible rates. The court said that is why Congress put in the word "class."

Senator DANFORTH. Obviously we botched it. We botched it in that we did something we did not intend to do. That is why I don't know whether it is Senator Mitchell's bill or some other bill. But it just seems clear to me that we have to clarify the law.

Thank you.

Senator INOUYE. Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you very much.

Mr. Chairman, thank you for holding this hearing on modification of the lowest unit charge provision of the communications act.

The intent of this provision was that political candidates not be charged more for advertising than a given station's most favored commercial advertisers. A candidate buying 30 seconds of advertising during prime time must be charged at the lowest rate used by that station for 30 seconds during prime time. It sounds simple, but in practice it becomes very complicated. Because a station can classify ads in a variety of ways and isn't required to reveal what its commercial advertisers pay, candidates sometimes don't even know whether they are being charged the lowest rate. There must be a better system.

Perhaps we can solve some of these problems by modifying the provision. The legislation we are considering would eliminate advertising distinctions based on class of advertising. Instead, it would require broadcasters to sell time for campaign ads at their overall lowest rate for advertising. This would certainly simplify the situation. That in itself would be an improvement.

On the other hand, I can understand the concerns of broadcasters that a straightforward, overall lowest rate approach could result in broadcasters effectively subsidizing political ads.

I have not yet made a decision on this legislation. I look forward to hearing from the witnesses and studying the issue more closely. Mr. Chairman, thank you again for holding this timely hearing.

Many of my questions have been covered by our able questioners, my colleagues.

Let me ask you this.

Do you receive more complaints from large markets or small markets? Are problems concentrated in certain geographic areas? If so, where?

Mr. GROSS. Probably not in either case. I don't think it is concentrated.

Clearly, the larger markets will generate more complaints because they are larger. Basically, I do not think there is much distinction between the larger and the smaller markets insofar as the percentage of complaints go. There is really no concentration in one area or another.

Senator PRESSLER. Are there any other special categories or loopholes that we don't know about that potentially—we are talking about this one that has been written up in the paper, and it seems like it is one that we should have spotted when we were legislating? Are there other categories, special categories or loopholes, that we don't know about that you are aware of?

Mr. GROSS. Not really.

As the Chairman mentioned before, we operate on a complaint basis. If there is such a loophole and if it is violative of the statute, we are going to try to correct that situation.

Senator PRESSLER. Thank you, Mr. Chairman.

Senator INOUYE. Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman. I have one final question.

Obviously, what I am trying to do in this bill is create a system that cannot be easily manipulated to favor one candidate over another, or to effectively deny the full extent of the mandated discount.

In this regard, how important is it that we tie the discount rate to the lowest rate officially charged by a broadcaster or merely the lowest rate actually paid by some advertiser?

Mr. GROSS. Well, basically, paid and charged would be the same thing.

We go by now, for example, on what actually airs determines lowest unit charge in a particular time period. So what is actually paid by the candidate or by the commercial advertiser would determine the lowest unit charge for a particular time period.

Senator MCCONNELL. Thank you.

Thank you, MR. Chairman.

Senator INOUYE. Thank you.

Mr. Chairman, to the extent you can advise me, what can you tell us about the pending application submitted by Mark L. Wodlinger, in which he charges KMOV with bias on political ads?

Mr. PATRICK. Mr. Chairman, I can tell you that that is a case now pending before an ALJ, and it is a restricted proceeding. For that reason, I cannot tell you too much in addition.

I know that issues of compliance with respect to 315 have been raised in that case.

Senator INOUYE. Can you tell us about what the allegations are, or the complaint? That is public notice, isn't it?

Mr. GROSS. Basically, Mr. Wodlinger alleged that Viacom, a licensee, had violated the lowest unit charge statute by charging Senator Kit Bond higher prices for political time than it charged that candidate's opponent, Harriet Woods, in the fall of 1986 and with charging Vice President Bush a higher amount than was quoted to candidate Pat Robertson during the 1988 primaries.

Mr. Wodlinger had petitioned the presiding administrative law judge to add this issue to the hearing. The judge declined to do so.

That is all we can say about that at this time.

Senator INOUYE. I thank you very much, Mr. Chairman.

Mr. PATRICK. Thank you, Mr. Chairman.

Senator INOUYE. Our next witness is the Senior Vice President and General Manager of WBTV-TV, Jefferson Pilot, of Charlotte, North Carolina, Mr. Cullie M. Tarleton.

Mr. Tarleton, welcome, sir.

STATEMENT OF CULLIE M. TARLETON, SENIOR VICE PRESIDENT AND GENERAL MANAGER, WBTV-TV

Mr. TARLETON. Thank you, Mr. Chairman.

Thank you for inviting me to testify today on lowest unit charges.

I am also appearing on behalf of the National Association of Broadcasters. I presently serve on NAB's Television Board of Directors.

The knowledge that some Members of Congress have of the political broadcasting policies and practices of stations is second-hand. It is a familiarity acquired through dealings with campaign advisers, media time buyers, and advertising agencies who have their own opinions and predictions.

I am pleased to be able to provide this subcommittee with a television operator's view on these important issues.

Congress first regulated broadcast political rates in 1952, and later amended those provisions in 1972. During specified preelection periods, stations are required to afford candidates their lowest unit charges. At all other times, stations may not charge candidates more than the charges for comparable use.

These provisions are designed to prevent broadcast stations from discriminating against candidates and to provide candidates with some relief from rising campaign costs.

In short, the rules require that candidates be treated as well as a station's most favored commercial advertiser for equivalent spots.

Candidates are to get all of the discounts and privileges accorded to these commercial advertisers, even though candidates do not purchase spots in the same volume as commercial advertisers and only purchase spots during limited time periods.

Over the years, the method stations use to sell advertising time has grown in sophistication and complexity. Earlier rate cards, which listed a station's advertising prices and discounts available for volume purchases, have given way, in many instances, to today's grid cards and other market-based pricing mechanisms. Grids base the price of a station's advertising on demand and are used by most television stations, as well as a number of radio stations.

Various price ranges for advertising spots are set by the station sales manager. The top price level on the grid is for fixed spots, which run at a certain time and cannot be preempted or bumped.

Lower price levels are signed for preemptible spots, which can be bumped by an advertiser willing to pay a higher rate.

The station's goal is to retain maximum flexibility to adjust its advertising rates as demand and its inventory varies.

Admittedly, grid card methods have made advertising buying decisions more complex for candidates. With the increasing sophistication of modern campaigns, most candidates target their ads to specific audiences at specific times of day. As a result, many candidates choose to purchase fixed spots to avoid having their spots bumped by commercial advertisers or even their opponents.

Fixed spots, of course, are the highest prices.

Candidates can save money by purchasing preemptible spots if they are willing to run the risk that their spots might be preempted.

Even with this evolution in advertising sales methods, it is safe to say that the political advertising structure created by Congress and enforced by the FCC works well. It acts to insure that candidates get reasonable access to broadcast facilities in a nondiscriminatory fashion at rates equal to or lower than the station's most favored commercial advertisers.

In addition to these statutory and regulatory checks and balances, there are institutional forces at work, both with stations and campaigns, that protect candidates.

My written testimony goes into greater detail on these points. But let me assure the subcommittee that my station would never jeopardize its license over comparatively small amounts of money by trying to take advantage of candidates when they buy time. That is the case, as well, with every other station that I am aware of.

I can also assure you that the FCC's August public notice has had a significant impact on the Nation's radio and television stations.

Even before I knew I would testify today, my employees and I were meeting with our attorneys to make sure we understood and could quickly comply with the new policies outlined by the Commission, and if the "Washington Post' article of last week is accurate, this notice also has had a major impact on candidates and their time buyers, who have wasted no time in shifting their buying priorities to less expensive preemptible spots.

This notice is further evidence that the FCC is diligent in its enforcement of the lowest unit charge rules and that Section 315 is working as Congress intended.

While some Members of Congress often feel that the FCC ignores their concerns and guidance, in this instance the FCC responded quickly and decisively to Congressional interest.

This is not to say that broadcasters are happy in all respects with the notice. There will be a few bumps in the road for candidates and broadcasters as they seek to understand and comply with these policies.

In particular, the policy on make-goods before Election Day may require further clarification. It may cause difficulties with stations that have tight advertising inventories.

This notice did add a new element of complexity to the political broadcasting rules. In general, however, it appears that the industry can live with the notice and stations, certainly, will abide by these policies.

Consequently, NAB submits that there is no need for Congress to adopt new legislation in this area. We oppose the two bills pending before this subcommittee.

It simply is wrong to assume that a major dent can be made in campaign spending merely by looking at broadcast time. These bills would, in effect, unfairly single out broadcasters, while leaving the majority of campaign expenditures untouched.

In conclusion, the vast majority of broadcasters are responsible in fulfilling their obligations under Section 315 of the act. Furthermore, the FCC has demonstrated that it is exercising its authority vigorously and in a manner that is responsive to Congressional direction.

With appropriate Congressional oversight, political advertising is an area that is especially suitable to the exercise of FCC jurisdiction. The Commission's extensive expertise and regulatory flexibility can be utilized as advertising and campaign practices evolve over time. Legislation is not needed.

On behalf of NAB, thank you for inviting me to testify on these important issues.

I would be happy to respond to any questions.

[The statement follows:]

STATEMENT OF CULLIE M. TARLETON, SENIOR VICE PRESIDENT/GENERAL MANAGER, WBTV-TV, CHARLOTTE, NC.1/

Thank you for inviting me to testify today on lowest unit charges. My name is Cullie M. Tarleton, and I am Senior Vice President and General Manager of WBTV, of Charlotte, North Carolina, a CBS affiliate owned by Jefferson-Pilot Communications Company.

I also am appearing on behalf of the National Association of Broadcasters, which represents over 5000 radio stations, over 970 television stations, and all of the major commercial networks. I presently serve on NAB's Television Board of Directors. We welcome the Subcommittee's interest in the very timely subject of political broadcasting rates. We presently are within the 60 day period prior to a general election in which the lowest unit charge provisions of the Communications Act are in effect.

This Subcommittee hearing appears to be the result of three general factors. First are the questions that have been raised about FCC enforcement of the lowest unit charge rules and broadcaster compliance with the rules. These questions are exemplified by Senator Rudy Boschwitz's July 12 letter to FCC Chairman Dennis Patrick. The second factor is the recent FCC Public Notice on lowest unit charges, which "reminded" broadcasters of their obligations under Section 315 of the Communications Act and sought to clarify certain aspects of the FCC's rules and policies implementing that section. The third factor is the legislation recently introduced by Senator Mitch McConnell of Kentucky. My testimony will touch upon all three of these issues.

BACKGROUND

Congress first regulated the rates that broadcast stations could charge candidates for political uses in 1952. Section 315 of the Communications Act was amended to permit broadcast stations to charge candidates no more than the charges assessed for "comparable use" of the station. This section was further amended in 1972. As a result, broadcast stations are required, during the 60 day period prior to general elections and the 45 day period prior to primary elections, to afford candidates the "lowest unit charge of the station for the same class and amount of time for the same period...." Outside of these specified pre-election periods, stations may not charge candidates more than the charges assessed for "comparable use."

The intent of these provisions was to prevent broadcast stations from discriminating against political candidates in the rates charged for advertising time, and to provide candidates with some relief from rising campaign costs. In short, the rules require that political candidates be treated as well as a station's most favored commercial advertisers for equivalent spots. Candidates are to get all of the discounts and privileges accorded to these commercial advertisers, even though candidates do not purchase spots in the same volume as commercial advertisers, and only purchase spots during limited time periods.

The lowest unit charge provisions, of course, are one example of how our nation's statutes and regulations treat broadcasting differently than the print media. By law, candidates are entitled to discount rates in the broadcast press, despite First Amendment guarantees of a free press. Furthermore, these provisions treat broadcast advertising costs differently than virtually every other

---

1/ The attachments were not reproducible.

category of campaign costs. Congress does not, for example, regulate the costs of billboards, balloons, buttons, banners, hats, campaign consultants, postage, travel or the myriad other expenses that candidates face. Only broadcast uses are regulated in this fashion.

As much as broadcasters dislike being treated like second-class citizens in this regard, we are realists. Given the views of Congress, and the prominent place that the broadcast media play in modern campaigning, these provisions are unlikely to be repealed anytime soon. We believe, however, they might well be susceptible to a constitutional challenge.

Over the years, methods of selling broadcast advertising time have grown in sophistication and complexity. Earlier "rate cards," which listed a station's advertising prices and discounts available for volume purchases, have given way in many instances to today's "grid cards" and other market-based pricing mechanisms. Grids base the price of a station's advertising on demand. Advertising demand, of course, varies by the size and demographics of the probable audience that a station's programs will deliver, and the time of year.

Grid cards and related pricing schemes are used by most television stations, and a number of radio stations. There are probably as many variations of grid cards as there are stations using them, but some generalizations are possible. (A prime time grid card from a Midwest television station is attached to my testimony as an example.)

Various price ranges for advertising spots are set by the station's sales manager. The top price level on the grid is for fixed spots, which will run at a time certain, and cannot be preempted, or "bumped." Lower price levels are assigned for preemptible spots. An advertiser who purchases a preemptible spot can be bumped by an advertiser willing to pay a higher rate for a particular spot. For purposes of the lowest unit charge provisions of Section 315, fixed and preemptible spots are different "classes" of time, and thus a different lowest unit charge will apply to each category.

Each week, the station's sales manager adjusts the price of his advertising schedule for future weeks. Price levels are assigned for each spot based on present and anticipated demand. For example, if a Washington area station is airing the Redskins-Giants game on Monday Night Football, the manager will price his advertising availabilities higher than when the scheduled game is the Lions against the Packers. Similarly, a spot in The Cosby Show will be priced higher than a spot in a low-rated show. Even after the station has set its prices, there typically will be negotiations between the station and advertisers over the specific price that will be paid for a spot.

The sales manager's goal is to retain maximum flexibility to adjust the station's advertising rates as demand and its inventory varies. The station can increase rates when demand rises and/or its inventory tightens, and reduce rates when demand slackens and/or its inventory is soft. In some respects, for stations and their advertisers, if rate cards can be analogized to buying products at retail prices in department stores, grid card advertising sales are more like auctions, or to negotiating over goods in a street bazaar.

Admittedly, grid card methods have made political advertising buying decisions more complex for candidates. With the increasing sophistication of modern campaigns, most political candidates target their political ads to specific audiences, at specific times of day.

As a result, many candidates purchase fixed spots, to avoid having their spots bumped by commercial advertisers, or even their opponents. Fixed spots, of course, are the highest-priced category of advertising sold by stations. Candidates can save money by purchasing preemptible spots if they are willing to run the risk that their spots might be preempted. The likelihood of being bumped is reduced if time is purchased at higher levels of the grid structure.

ENFORCEMENT OF THE LOWEST UNIT CHARGE RULES

Given the flexible and evolving state of methods of advertising sales, and the dynamic, emotionally-charged nature of political campaigns, it is not surprising that from time to time questions are raised about how the FCC enforces the lowest unit charge rules and whether there is full broadcaster compliance with such rules. Such questions recently were raised by Senator Rudy Boschwitz, the present Chairman of the Republican Senatorial Campaign Committee, in a letter to FCC Chairman Dennis Patrick.

It is generally safe to say that the political advertising structure, created by Congress and enforced by the FCC, works well. There are numerous statutory, regulatory, and institutional checks and balances in place which ensure that broadcasters provide candidates with access to their facilities, in a non-discriminatory fashion, and at rates equal to or lower than the stations' most favored commercial advertisers.

The FCC's political broadcasting rules flatly prohibit discrimination between candidates. Furthermore, licensees must maintain a political file. This political file, which also is available for public inspection, must contain a complete record of all requests for broadcast time made by candidates, along with a record of the disposition of each request, including the rates charged for granted requests. If a station provides free time, the political file also must contain records of the free time provided. Licensees must retain their political files for at least two years.

Candidates who have complaints or disputes with broadcasters over political matters may turn to the Commission for their resolution. The FCC's Political Programming Branch routinely handles thousands of calls and letters on such matters during election years. In many instances, the FCC staff can resolve these matters informally. In cases where these informal methods are unsuccessful, candidates may file complaints with the FCC. If the complaint raises evidence that a licensee has not complied with is obligations, the FCC staff will investigate.

Broadcasters face the full range of FCC sanctions if they violate the political broadcasting requirements. These sanctions include letters of admonition from the FCC that are placed in the licensee's file, forfeitures of up to $20,000, or even loss of the station's license.

In addition to these statutory and regulatory protections, candidates receive a large measure of institutional protection from the business practices increasingly being used by stations and political campaigns themselves. Most stations assign one employee to coordinate and supervise all of their political advertising sales. That employee helps ensure that the station is fulfilling its political broadcasting obligations, which include reasonable access for federal candidates and equal opportunities for all candidates, as well as the provision of lowest unit charges.

In addition, virtually all stations use station "reps," which are companies established to act as an agent for stations in the sale of advertising time to regional and national advertisers. Stations maintain virtually daily contact with their reps, and closely supervise the advertising contracts their reps initiate. Candidates, too, increasingly are using advertising agencies or professional media buyers to formulate and execute their campaign advertising strategies. Thus, more and more broadcast advertising buys for candidates are initiated not by campaign staffers with comparatively little familiarity with advertising and commercial practices, but by experienced station reps and ad agency employees.

As a result, candidates are more assured of getting the best deal for their money, because on both sides of the table are professionals who deal extensively in the buying and selling of commercial time. One week, the station rep may be negotiating with an ad agency employee on a commercial advertisement, while the next week the same two individuals may be negotiating on a political buy. Each is familiar with the commercial rates and practices of the market, and each wants to continue to do business with the other after the campaign is concluded. Consequently, each side has strong incentives to "play it straight" with the other side.

Broadcast stations have additional informal incentives to deal fairly and consistently with candidates. Broadcasting, of course, is a regulated industry, subject to the jurisdiction of Congress. There is no percentage in antagonizing candidates whose goodwill shortly may be needed on legislation that directly or indirectly affects station interests.

FCC PUBLIC NOTICE OF AUGUST 4, 1988

On August 4, 1988, the FCC issued a Public Notice on the lowest unit charge obligations of broadcasters and cable operators. This Notice appears to be in direct response to the concerns and questions on lowest unit charges recently expressed to the Commission by a several members of Congress. It focused on the issue of purchases by candidates of preemptible advertising time.

The Commission clarified several basic points on preemptible time. First, the lowest unit charge for preemptible time is the price of the least expensive spot to "clear" a given time period each week. If a candidate has purchased time at higher rate, the station must rebate or rebill the candidate at the lower rate.

If a station initially sells time in a particular program to a candidate at a rate higher than the least expensive spot that eventually clears that time period

that week, the station must give a rebate. If a candidate buys less expensive preemptible time and the spot sold to the candidate is bumped, the candidate must receive a "make good" before the election if the station also offers make goods to commercial advertisers. The terms under which a make good is aired can be negotiated between the candidate and the station.

The Commission will continue to treat fixed, "run-of-schedule," and "preemptible with notice" as different classes of time.

While some Members often feel that the FCC is unresponsive to their concerns and to their guidance on matters of communications policy, in this instance the FCC responded quickly and decisively to Congressional interest. This Notice reinforces the fact that the FCC is vigilant in its enforcement of the lowest unit charge rules, and demonstrates that the structure created in Section 315 of the Communications Act is working as Congress intended.

An article in the Washington Post last week described this Notice as "ground-breaking" and states that it was "applauded by Republican and Democratic candidates alike." According to the Post, the Notice already has had a significant positive impact on candidates and their time buyers, who have wasted no time in shifting their buying priorities to less expensive preemptible spots.

This is not to say that broadcasters are happy in all respects with the Commission's clarifications of its policies outlined in the August Notice, or that there will not be a few bumps in the road for candidates and broadcasters as they seek to understand and comply with the Notice. In particular, the portion of the Notice dealing with "make goods" before election day may require further clarification for stations. The FCC's present interpretation may create difficulties for stations that have tight advertising inventories, as many stations will during this fall season. Some candidates are likely to purchase the lowest-priced preemptible spots available from a station, with the expectation that they can receive a make good before the election if they are bumped.

The Commission's Notice has added a new element of complexity to the political broadcasting rules. In general, however, it appears that the industry can live with it, and stations certainly will abide by these policies.

LEGISLATION ON LOWEST UNIT CHARGES

The Subcommittee also has before it two bills introduced by Senator Mitch McConnell. These bills would substantially alter the nature of the present political broadcasting structure.

S. 2627, the "Campaign Broadcast Discount Act of 1988," was introduced by Senator McConnell on July 11. This bill would amend Section 315 of the Communications Act to specify that a station's charges for preemptible political time would have to be its lowest preemptible rate for that particular spot. A station could charge a candidate no more than 150% of that rate for a fixed spot.

S. 2657, the "Campaign Cost Reduction Act of 1988," was introduced by Senator McConnell on July 26. This bill amends Section 315, in effect, to require stations to sell candidates fixed spots at their lowest preemptible rate.

Senator McConnell stated that his intent in introducing these bills is to "take a giant leap forward in reducing the cost of political campaigns." In Senator McConnell's personal experience, "the cost of TV advertising eats up at least half and as much as three quarters of all money spent in a campaign," and he says that "a very small segment of society is making money hand over fist off of broadcast licenses...." His intent, however, is not to "seek to cause broadcasters excessive harm."

NAB opposes these bills. In particular, NAB takes issue with one critical premise of the McConnell legislation -- that broadcast political time is a huge proportion of all campaign expenses, and that drastically cutting rates for political time would thereby lower the cost of campaigns. In the past, we routinely heard estimates that the percentage of campaign expenses that goes to the broadcast media ranges as high as 80 percent. When we attempted to examine those figures more closely, we found that they were just rough estimates. No one appeared to have hard data on actual campaign expenditures. NAB decided to contract for our own study of campaign spending in the 1986 federal elections, based on actual campaign filings with the Federal Election Commission.

That study is attached to my testimony. We found that in 1986, federal candidates spent 24.3 percent of their budgets to buy television and radio advertising time. House candidates spent 15.8 percent of their total reported expenditures, while Senate candidates spent 34 percent.

While these are not insignificant amounts of money, they prove to be far less than the rough "guestimates" typically relied upon in discussions on campaign spending. It is simply wrong to assume that a major dent can be made in overall campaign spending merely by looking at broadcast time. It would be grossly inequitable to single out broadcasters while leaving the remaining 75% of campaign spending categories untouched.

In addition to the mistaken impressions about campaign expenditures, these bills, especially S. 2657, could work real hardships on smaller broadcasters and those with marginal operations. S. 2657 would eliminate the term "class" from Section 315, and provide candidates with fixed spots at a station's lowest preemptible rate. In 1972, the original version of the legislation establishing lowest unit charges had that effect, as well. As reported by this subcommittee's parent, the Commerce Committee, the legislation did not contain the term "class." On the Senate floor, however, Senator Stevens -- then and now a member of the Commerce Committee -- successfully offered an amendment that added the concept of class of advertising time to the Act. The arguments that Senator Stevens raised in favor of his amendment are as valid today as they were 16 years ago -- it would be inequitable, and especially harmful to smaller and marginal stations, to require stations to sell fixed political spots to candidates at their lowest preemptible commercial rates.

CONCLUSION

In conclusion, NAB sees no need for Congress to adopt new legislation. The vast majority of broadcasters are responsible in fulfilling their obligations under Section 315 of the Act. Furthermore, the FCC has demonstrated that it is exercising its authority vigorously and in a manner that is responsive to Congressional direction. With appropriate Congressional oversight, the area of political advertising is one that is especially suitable for the exercise of FCC jurisdiction, where its extensive expertise and regulatory flexibility can be utilized as advertising and campaign practices evolve over time.

On behalf of the National Association of Broadcasters, thank you for inviting me to testify on these important issues. I would be happy to respond to any questions.

Senator INOUYE. I thank you, sir.

Senator McConnell.

Senator MCCONNELL. Broadcasting is a pretty lucrative business for most owners, is it not?

Mr. TARLETON. Senator, broadcasting, like any other business, properly managed, can be profitable. Yes, sir.

Senator MCCONNELL. I am familiar with some of the sales prices of major radio and television stations in my State that have changed hands a few years later, and there is an astronomical increase in the value of those operations.

As I indicated in my testimony—and I don't know whether you were here or not to hear it—about three-quarters of one percent of total advertising revenue in your industry in this country comes from political campaigns. It's three-quarters of one percent.

Are you telling me that you are against a bill that would provide some relief to those who are seeking public office in this country that would take some chunk out of three-quarters of one percent of your total advertising revenue? Is that what you are telling me?

Mr. TARLETON. Senator, our research indicates that the number is a little higher than 0.75 percent. It ranges from a low of 1 percent in the top markets to perhaps as high as 4 percent in smaller markets. But, even at 4 percent, that still does not represent a large percentage of a station's overall revenue.

I would submit that the regulations are already there that protect the candidates, that give the candidates reasonable access to the broadcast station at rates comparable with the station's most favored advertisers, commercial advertisers.

Senator MCCONNELL. When the differences between, as was pointed out in Senator Danforth's questioning of Chairman Patrick, when the differences in rates between preemptible and nonpreemptible time can be as much as three or four times?

Mr. TARLETON. Well, keep in mind that on a grid card, it might not be unusual for the fixed rate, say, to be $800. If you have a series of five preemptible levels, everything from P-1, P-2, P-3, P-4, all the way to P-5, the difference between the fixed rate and the P-5 rate might well be $300 or $400. But the difference between fixed and P-1 or P-2 might be $75 or $50.

Senator McCONNELL. How much of an impact on profit would the passage of my bill have?

Mr. TARLETON. Senator, I can't sit here and tell you that because I don't know.

I would only discuss with you that I think it is inequitable to single out broadcasters, to say that you have to extend the lowest preemptible rate for a nonpreemptible spot.

Senator McCONNELL. That's inequitable?

Mr. TARLETON. I think it is.

I think it is unfair to single out broadcasters. Our research has indicated that in the 1986 campaign, 34 percent of the total campaign expense for a Federal Senate campaign was spent on broadcasting.

Senator McCONNELL. Well, with all due respect to you, sir, that is an absurd statistic.

As a practical matter, in any competitive race in America—a competitive race in America—well over 50 percent of the money spent in the campaign is going to be in the broadcast medium because, as you well know, it is the most effective way to reach the people in this particular activity. You don't get very far running for Congress or United States Senator or Governor by advertising in the newspaper—with all due respect to people in the newspaper business.

As a practical matter, these campaigns, when they are competitive, are run on the radio and television, and you are, in fact, in the business that most directly gives us an opportunity to reach the voters.

That statistic, I don't know how you came up with it. But I can tell you that I think it is absurd on its face. There is nobody up here in this body who runs for political office in a contested race who would believe that for a minute. I think, with all due respect, it is kind of insulting to our intelligence.

Mr. TARLETON. Senator, the research was done by a reputable research firm. There is a copy of attached to my testimony.

Senator McCONNELL. Did the research divide up contested versus uncontested races?

Mr. TARLETON. Senator, I don't know the answer to that. It was sponsored by NAB. It looked at all Federal races in 1986.

Senator McCONNELL. I have no doubt about that, and that is precisely the problem.

Mr. TARLETON. I suspect they were all lumped together.

Senator McCONNELL. Yes, I'm sure they were, and that is how you got it down to 34 percent.

Now, if you wanted to deal with contested races, it would be nowhere near 34 percent.

I would be interested, by the way, if you all would come up with the real figure here, which is what percentage of the campaign money is being spent on broadcast advertising in contested races. That is what we are talking about. That is when change occurs up here, in contested races.

Now, there are a lot of races that are not contested, particularly in the House of Representatives, and if you throw those in, where you have an incumbent who does not have to do anything to get reelected except hire a little staff and go through the motions, then you can lower it to 34 percent.

But as a practical matter, though, what you are engaged in here is you all own and operate the businesses through which, in this day and age, we reach the public. You are telling me, assuming your highest figure, 4 percent of your revenue comes from campaigns, that you are unwilling and think it is unfair to provide some kind of meaningful discount that allows us to get fixed time at preemptible rates.

Mr. TARLETON. Yes, sir, because I think the regulation already exists that provides Federal candidates and all candidates, for that matter, reasonable access to our facilities at rates certainly no higher than rates extended to our most favored commercial advertisers.

Senator MCCONNELL. If you want to run the risk of your ad running in December.

Mr. TARLETON. I'm sorry.

Senator MCCONNELL. If you want to run the risk of your ad running in December.

Mr. TARLETON. No, sir.

The Commission's August notice made it very clear that make-goods are to be scheduled prior to election.

Senator MCCONNELL. Well, as a practical matter, the way it is working out is that we are not getting a discount because, in a competitive race, you cannot take the chance of buying preemptible time. You just cannot do that. And so, you end up buying the most expensive time.

Again, with all due respect to you and the business you are in, I don't think you ought to have that option. You don't own those airwaves. I think you ought to be required to sell us fixed time at the lowest unit rate available during that period.

I do not think that is asking too much. This is a miniscule portion of your total advertising revenue. In a typical State, we are talking about a 45 day period before the primary every two years and 60 days before the general election every two years—in a typical State.

Mr. TARLETON. Unfortunately, Senator, both those dates, the primary date that occurs in my market, during the month of May, and the general election that occurs in November, occur in two of the heaviest quarters for broadcasters.

There is tremendous demand on inventory during the fourth quarter, which is the period leading up to the election, and the election itself is in the fourth quarter, as there is tremendous pressure on the stations' inventory leading into the early summer.

As I said, I believe and broadcasters believe that the present statute provides protection for the candidates to receive the lowest unit rate, certainly no higher than commercial advertisers receive.

Senator MCCONNELL. How much competition is there for a broadcast license typically?

Mr. TARLETON. Senator, I cannot answer that.

I manage a station that has been on the air since 1949, and I don't know. I was not there when we filed for the license. I don't know if there were other people who filed for it as well.

But we have had a new station sign on in our market in the last 18 months, and there were probably half a dozen different parties who were interested in getting the license.

Senator MCCONNELL. If my bill passed, do you think there would be any lessening of interest in getting these broadcast licenses?

Mr. TARLETON. No, sir.

Senator MCCONNELL. I have a question about the true meaning of lowest unit charge under current law.

Let's say a broadcaster has a rate card laying out a range of prices for preemptible time, from, say, $100 to $500. If no advertiser decides to select the cheapest rate, $100, because of fears of preemption, what, then, is the effective lowest unit charge?

Mr. TARLETON. Well, somewhere within that class there will be a lowest unit rate established.

Senator MCCONNELL. Is the lowest unit rate what someone paid or what you offer?

Mr. TARLETON. What someone paid for a spot that runs establishes the lowest unit rate within that time period. If it is $200, then $200 is the lowest unit rate.

Senator MCCONNELL. So it is not what was offered. It is what somebody paid.

Mr. TARLETON. What someone paid for it; what the spot ran for.

Senator MCCONNELL. So, if no one bought the $100 time but someone bought it at, say, $200, then that is the lowest unit rate available?

Mr. TARLETON. Yes.

But if you, as a candidate, want to buy it at $100 and run the risk of being preempted——

Senator MCCONNELL. So that's the lowest unit rate—what you offered it, or what somebody was willing to pay for it?

Mr. TARLETON. It is my understanding that the price for which the spot ran establishes the lowest unit rate for that time period.

Senator MCCONNELL. It's pretty damn confusing, isn't it?

Mr. TARLETON. Well, it's complicated.

Senator MCCONNELL. It sure is. It sure is. I think that is just another good argument, in addition to the cost break for the campaign, to simplify this process, so that everybody understands what we are doing.

Mr. TARLETON. Let me hasten to add, Senator, as I said in my testimony, the FCC's August notice is not being taken lightly by broadcasters around the country. We are complying. We will comply with the FCC, and yes, it is complicated. But there are other things in our business that are complicated as well.

It is not nearly as complicated as some of the technical issues that we deal with.

Senator MCCONNELL. Well, you know if it is that complicated for you all, can you imagine what it is for the typical campaign?

Mr. TARLETON. Senator, please understand that broadcasters are honorable men and women.

I am not going to put my license at jeopardy over revenue that brings in—your number is .75 percent; our research shows 1 to 4 percent—this amount. It is not worth it. We simply do not do it.

We are honorable businessmen and women, too, like in other businesses.

Senator MCCONNELL. Sure, and I would not dispute that for a minute. The way you characterized your answer is further evidence, since this is such a miniscule portion of your revenue, that my bill is really not going to have much of an impact on your profit, is it?

Mr. TARLETON. Senator, there is a principle involved.

Senator MCCONNELL. Now is it? My bill is not going to have much of an impact on your profit, is it?

Mr. TARLETON. "Much" measured in what term?

Senator MCCONNELL. Oh, please. Please answer my question.

My bill is not going to have much of an impact on your profit, is it?

Mr. TARLETON. Not a great deal.

Senator MCCONNELL. Thank you.

Mr. TARLETON. But there is a fundamental fairness question here.

Senator MCCONNELL. Thank you, Mr. Chairman.

Senator INOUYE. Thank you.

Senator Danforth.

Senator DANFORTH. Mr. Chairman, thank you very much.

Mr. Tarleton, on the grid cards, explain them to me. Is it physically a card and the card has a fixed rate on it, and then it has P-1, P-2, P-3, P-4, and P-5? Is that the way it looks?

Mr. TARLETON. Senator, that is an example of how a grid card could look. Yes, sir.

Senator DANFORTH. And it would have a dollar amount on each one?

Mr. TARLETON. Yes, for a particular time period, whether it is prime time or daytime rotation, or "P.M. Magazine," or news.

Senator DANFORTH. Sure.

Let's take a grid card for a particular slot of time, say 8:00 to 9:00 o'clock at night. So it could have: fixed time, say, $800; and then it could have P-1, $600; P-2, $500; P-3, $400; and so on.

Mr. TARLETON. Yes, sir.

Senator DANFORTH. Now if you are the station and I am the buyer and I come in and say look, I want to buy some preemptible time and have a fairly good chance that it will be on the air, you could say well, you might buy, say, P-4 or P-3, just depending on how it looks to you. Right?

Mr. TARLETON. Depending on the pressure on the inventory during the time that you wish to run it. Yes, sir.

Senator DANFORTH. Would this be typically negotiated one-on-one between the station, the seller—what is the station person called who makes the sales?

Mr. TARLETON. The sales manager.

Senator DANFORTH. Yes, between the sales manager and the buyer, would it be negotiated between them?

Mr. TARLETON. Typically, Senator, it would be between the sales manager and the buyer's agent.

Senator DANFORTH. The buyer's agent. Okay.

Would it be face-to-face or on the phone?

Mr. TARLETON. Both.

Senator DANFORTH. Both.

Mr. TARLETON. More often than not, for Federal candidates, it would be on the phone.

Senator DANFORTH. So the sales manager gets a call from the buyer's agent and the buyer's agent says hey, I want to buy a slot at 8:00 o'clock on Wednesday night, and you say well, this looks like it has an average chance of being preempted and I might suggest that you buy a P-3.

Is that what you would do?

Mr. TARLETON. Well, if the candidate—and I assume we are talking about that here—if the candidate has determined that the 8:00 o'clock time slot on that particular station is reaching a target audience that is critical to that particular candidate, then, more often than not, the agent would say to us look, this is an important spot for us and I don't want to be preempted. What is it going to take to hold this spot? If there is a lot of pressure on inventory at that time, we might well say that our recommendation to you is to pay the fixed rate if it is critical to you that it indeed run on that particular night.

Senator DANFORTH. Or you could say anything less than the fixed rate, right?

Mr. TARLETON. Well, yes, sir.

Senator DANFORTH. Now, for each of these particular items, is the quotation for each of these subgroups a nonnegotiable quotation, or is it a negotiable quotation? If you were to say P-3 is $300, does that mean that that is our asking price, but you may be able to get it for $275?

Mr. TARLETON. No. If P-3 is $300, then that is the rate for $300. Anything less than $300 and maybe it becomes P-2 or P-1.

Senator DANFORTH. These are suggested amounts, right? Let's say that P-1 is $300 and P-2 is at $200. If somebody says well, I want to buy it at $250, you could do that, couldn't you?

Mr. TARLETON. Senator, with the number of radio and television stations that there are in the country, I suppose that happens. But when we publish our rates, if we say a P-3 is $300, then that is the rate we are going to charge for P-3.

Senator DANFORTH. Well, P-3 is $300, but, in other words, there are more than five or six categories.

Mr. TARLETON. Yes, sir.

Senator DANFORTH. There is anything in between that you want to get, right?

Mr. TARLETON. Yes, sir.

Senator DANFORTH. And that is typical. You might not call it P-3, but there is anything in between that you can buy, right?

Mr. TARLETON. No, sir.

What you are suggesting is that it is bought off-card, and we don't sell off-card. We sell at published rates.

Senator DANFORTH. I'm not sure that I understand what you are saying.

I am told that what is on the card is a dollar amount.

Is P-1 high and P-5 low, or is it vice versa?

Mr. TARLETON. Yes, sir. That's right. In our case it is.

Senator DANFORTH. Let's say P-1 might be $500 and P-2 is, say, $400.

Now, if somebody wants to be more certain than P-2 but less certain than P-1, can they come in and say well, we'll pay $450?

Mr. TARLETON. Not on our television station.

Senator DANFORTH. Not on your particular station?

Mr. TARLETON. No, sir.

Senator DANFORTH. But I am told that that is very common.

Mr. TARLETON. Senator, I cannot sit here and tell you with certainty one way or the other.

As I said earlier, that would be what in the industry is referred to as "selling off-card," a nonpublished rate.

Senator DANFORTH. Is that done?

Mr. TARLETON. Oh, I'm sure it is done with the number of stations there are around the country.

Senator DANFORTH. Now the FCC now says in political advertising that there are really two rates: one is fixed and the other is preemptible. Right?

Mr. TARLETON. Yes, sir.

Senator DANFORTH. That's what they say.

Now, does that mean to you that within the category of preemptible, there is only one number that you can sell, or does that mean that preemptible is sort of this "field" of various degrees of preemptibility?

Mr. TARLETON. That means that within the preemptible rate class that we extend to the candidate the lowest unit rate that ran for any preemptible spot. And if we overcharged the candidate, then he will be rebated.

Senator DANFORTH. But does it mean that there are still degrees of preemptibility by how much you are willing to pay?

Mr. TARLETON. Yes, sir, for commercial advertisement.

Senator DANFORTH. So, for a commercial advertiser, if one comes in and says I want to pay $100 bucks and the other $105, the $105 can preempt the $100?

Mr. TARLETON. Well, if $105 is the next step up.

You know, what would happen is this. Using your 8:00 to 9:00 o'clock analogy, there are, let's say, 12 commercial availabilities within that time block. If all 12 of them are sold and we have a thirteenth advertiser who steps forward and says I've got to have that time period, what's it going to cost me, then we look at the record. We say well,

here is a P-4. It is the only P-4 in there at $100. P-3 is $110. If you will pay $110, we will bump the $100 P-4.

Senator DANFORTH. Let me ask you this, then.

Let's say you have a system generally for commercial advertisers and it is P-1 through P-5 and then fixed, and a commercial advertiser has bought a P-1 at $500. Can the political advertiser then come in and say I want to look at your card and the lowest unit rate is a P-6, and that is only $100, so I am going to pay $100 and get the slot?

Mr. TARLETON. Yes, sir. But it would be subject to preemption.

Senator DANFORTH. So he would be subject to preemption by whom?

Mr. TARLETON. Another candidate or a commercial advertiser.

Senator DANFORTH. So let's say the candidate comes in and says what's your lowest unit rate and the lowest unit rate is P-5, which is $100. He buys a slot for $100 bucks. Then somebody else comes in for $110. He can preempt him, correct?

Mr. TARLETON. Yes, sir, unless we have a commercial advertiser in there at $100, in which case that has then established that class of time, the lowest unit rate, which is $100, and the candidate would remain.

Senator DANFORTH. So, even under the FCC's interpretation, these people can be preempted by anybody who comes over, right?

Mr. TARLETON. Yes, sir. But they cannot be preempted if there is a commercial advertiser in there whose rate has established the lowest unit rate.

Again, taking your 8:00 to 9:00 o'clock analogy, if there are 12 commercial avails in there and we have two commercial advertisers in there—let's say, we've sold 11 and we have two commercial advertisers in there at $100 and you, as a candidate, want to come and buy the twelfth position, the lowest unit rate is $100, regardless of the level of preemptions. That is the rate that you are going to be given.

Senator DANFORTH. Could my opponent then come in and say I'll pay $105 and he will get it?

Mr. TARLETON. No, sir, because the lowest unit rate has been established for that class of time, and the lowest unit rate is $100, because we have a commercial advertiser.

Now, we would bump probably one of the commercial advertisers who is in at $100 and give it to your opponent, the other candidate, but at $100, because the lowest unit rate has still been established at $100.

Senator DANFORTH. One other question.

Can you preempt as a matter of right or is that a matter of discretion for the station?

Mr. TARLETON. As a matter of right. Our rate card makes it very clear that the preemptibles are preempted without notice.

Senator DANFORTH. Let's say that I am McDonald's and you like me. You want me as a customer. Let's say I bought something at $100 and somebody else comes in and is willing to pay at a higher rate, say, $150 for the same slot.

Does he have an absolute right to get that slot?

Mr. TARLETON. No, sir.

Senator DANFORTH. So you can keep McDonald's at $100?

Mr. TARLETON. The inventory still belongs to the television station to manage in the manner they determine as most advantageous to them.

Senator DANFORTH. It has been testified by Mr. Patrick and stated in the public notice that fixed rate spots are frequently offered to political candidates only.

Do you agree with that statement?

Mr. TARLETON. I am not familiar with instances where only candidates are offered fixed political time.

Senator DANFORTH. Do only political candidates buy them?

Mr. TARLETON. No, sir.

Most television advertising, Senator, that is placed by commercial advertisers, is placed in response to very careful market research that they have done. They make a determination that on any television schedule, they are after a particular segment of the audience.

If they have determined, for instance, that "The Cosby Show' gives them the greatest opportunity to reach that particular segment of the audience that they need to reach, then they are going to pay the fixed rate if they determine it is important enough to them.

Senator DANFORTH. So there is no such thing as a political rate card?

Mr. TARLETON. I don't have one.

Senator DANFORTH. Do you know of any?

Mr. TARLETON. No, sir.

WBTV publishes quarterly rate cards in response to the marketplace. I think this is a fairly common practice.

Senator DANFORTH. Is there any way we could get information as to how frequently fixed rates are sold to commercial advertisers?

Mr. TARLETON. I suppose, Senator, we could canvas the industry and try to compile that information.

Senator DANFORTH. I think it would be very interesting to find it out; but I don't know that it is determinable.

Would you say that it would be much more likely that a political candidate would buy fixed rates than a commercial advertiser?

Mr. TARLETON. Again, Senator, if they have determined that a particular time slot is critical to them——

Senator DANFORTH. Oh, I'm not asking some hypothetical thing here. I'm asking about your experience. Do you think it is much more likely?

Mr. TARLETON. My experience for the last few years has been that campaigns have gotten very, very sophisticated.

Senator DANFORTH. Then let me restate the question because that is really not what I am asking.

Do you think it would be more likely that a political candidate would pay the fixed rate than a commercial advertiser?

Mr. TARLETON. Probably.

Senator DANFORTH. Certainly?

Mr. TARLETON. I would say probably.

Senator DANFORTH. Would it be really rare that a commercial advertiser pays the fixed rate?

Mr. TARLETON. No, sir.

Senator DANFORTH. Not rare?

Mr. TARLETON. No, sir.

Senator DANFORTH. Can you guess the fraction? Would it be half the time?

Mr. TARLETON. I would prefer not to pull a number out of the air.

Senator DANFORTH. But I'd really like to know because the FCC has said that there is something called the political rate card and that fixed rates are offered to political candidates only.

You indicate that it is typical for commercial advertisers to pay a fixed rate. So we have here a fact question before us and you are our expert from broadcasting.

I really think this is important information to know.

My assumption is, based on what the FCC is telling us, that political candidates are over the barrel in this operation and that they are in a position where they are very vulnerable to being "buffaloed' by the station, where the station can, by hints and winks, indicate to one candidate that he is not going to be preempted and to another that he is going to be preempted; that the political candidates are desperate to sew down their slots and buy fixed rates, as Kit Bond apparently did two years ago; and that the other candidate can pay just a tiny fraction of that; and that the commercial advertisers are not going to be bumped, so there is discretion by the station whether to bump them or not; and that McDonald's or GM are going to buy low, preemptible rates with the assurance that they are not going to be preempted; and that political candidates are in an entirely different position.

Now that is the testimony that has been presented both by Senator McConnell and by Chairman Patrick.

Do you dispute that?

Mr. TARLETON. Senator, I have been in this business for 23 years. Certainly at our stations, and we own a number of stations, or of any other stations—and I have been active in the National Association of Broadcasters both as a radio manager and as a television manager—I have never in my life been aware of or even heard about in cocktail party kind of conversation where winks and nods and things like that have taken place.

Senator, please understand that, as Senator McConnell points out, 0.75 percent—we say 1 percent to 4 percent—the stakes are simply too high for broadcasters to engage in those kinds of practices.

Senator DANFORTH. But if the proof is impossible and if the law provides different classifications based on degree of preemptibility, it would be a very simple thing to do with no risk to the license.

Mr. TARLETON. Well, there are some recourses if the candidate feels that he or she has been overcharged. He certainly has the option to file a complaint with the FCC, and if the FCC determines that there is reason for them to investigate, then they certainly can come in and look at the records.

Senator DANFORTH. Sure they can.

But if the defense is well, the law provides for two classifications and you bought one and the other guy bought another and he just used better judgment, there is nothing to say that the station manager or the sales manager cannot weigh-in and inform that judgment.

Mr. TARLETON. There is no reason for them to do that. It just does not make good business sense for them to do that, Senator.

Senator DANFORTH. Let's just give a terrible hypothetical, and I know you are going to say oh, this cannot possibly be.

But let's say that there is somebody who is operating a television station who is very politically involved and who has strong feelings about the course of the country and really wants to help one candidate to the maximum extent possible.

Could not that candidate use this differential? Could not that station use this differential in pricing, in rates, to weigh-in for one candidate against the other?

Mr. TARLETON. Senator, of course that would be possible.

Senator DANFORTH. Sure.

Mr. TARLETON. Now I consider myself one of those individuals, someone who is concerned about this country, someone who is involved, someone who is responsible, and certainly I have my own political leanings and my favorite candidates. But I am not going to put at risk a multimillion dollar television station over relatively few dollars.

I'm not going to deliberately shoot myself in the foot, and I don't know of responsible broadcasters who will.

Senator DANFORTH. I guess my concern is that the way the FCC has interpreted this situation, the risk is comparatively little that you will lose your license and the risk of abuse is significant.

I am not questioning the integrity of anybody, believe me.

Mr. TARLETON. I know that.

Senator DANFORTH. You know, I'm a politician. I don't take it as a questioning of my integrity when people say that there should be various rules against corrupt politicians. Obviously there should be.

But it just seems to me that if something that was alleged to have happened to Kit Bond in the last election could happen, then we really have to focus on this situation.

I have taken way too much time, and I appreciate your attention.

Mr. TARLETON. Thank you, Senator.

Senator INOUYE. Senator Gore.

Senator GORE. Thank you, Mr. Chairman.

I came in a little bit late, so I will be brief in my questions. But I do have a few questions.

I apologize to Chairman Patrick for missing his testimony and to Senator McConnell, who can fill me in on the floor on his. I have been reading his here.

Mr. Tarleton, preemptibility is a matter of right for the station under the law, correct?

Mr. TARLETON. Yes, sir.

Senator GORE. But it is also an option exercised at the discretion of the station, correct?

Mr. TARLETON. Yes, sir.

Senator GORE. Now, if you had an advertiser who had been a very good customer of yours for a long period of time and this advertiser was spending a lot of money on your station and was attempting to balance the amount of money he spent on your station versus the amount he spent on your competitors, you might get into a competitive situation with the other stations in your market and enter into a contract with this customer.

Correct?

Mr. TARLETON. Yes, sir.

Senator GORE. Have you done that?

Mr. TARLETON. I have not personally. My station has, I am sure, though.

Senator GORE. Now a contract of that kind might extend over a period of many months, correct?

Mr. TARLETON. Probably weeks as opposed to months.

Senator GORE. All right.

Now, can you imagine a conversation with that advertiser including a verbal assurance from the station that you would be extremely reluctant to preempt an ad if it technically fell into your preemptible category because of the long-term business relationship?

You might well say to that person: look, you are in this category but we have the option and you really don't have to worry about this. In an extreme case, we might be forced to do it, but it is most unlikely, and you stay with us instead of dividing the pie, or giving a larger slice to our competition, and you don't really have to worry that much about being preempted.

That kind of assurance, can you imagine that?

Mr. TARLETON. What we would more likely say to the advertiser, Senator, is that even though you have bought a preemptible without notice spot, because of your longstanding with us, we will notify you, rather than preempt you without notice, and give you the option to move up to the next level in the event you are about to be preempted.

Senator GORE. And if that long-time customer is buying time in a competitive market, you know that that person's decisions next year will be affected by how well you treat him this year, right?

Mr. TARLETON. Yes, sir.

Senator GORE. And so, bearing that in mind, you might be a little reluctant to notify him that he was being preempted, and you might be inclined to sort of bend over backwards to keep him on, even if it were possible to make a few extra bucks for that particular 30 second spot. Right?

Mr. TARLETON. Yes, sir, unless such action created problems for me somewhere else.

Senator GORE. Well, it is.

If you had a good friend who was running for Congress or the United States Senate, it would be possible for you, under the law, to say to that person look, you are in a preemptible category here, but it is our option and I just want to tell you if we get a lot of pressure, if it is an unusual circumstance, we might have to bump you, but I just want to tell you that look, we have been friends for a long time and I'm not doing anything different for you than I am doing for Sears and Roebuck or another good long-time customer. We have known each other for a long time. So I'm going to bend over backwards and make sure that you are not bumped. Stick with the preemptible rate, take it from me.

You could do that, right?

Mr. TARLETON. Senator, I'm not a lawyer, and, as you said, that would not violate the law. Perhaps it would not violate the letter of the law, but I think it would certainly violate the spirit of the statute. I cannot imagine doing that at our station. I cannot imagine any broadcaster doing that.

The stakes are simply too high for broadcasters to engage in that kind of activity. It just does not occur that I am aware of, anywhere.

Senator GORE. But, under the law, you could do that?

Mr. TARLETON. I suppose.

I'm not a lawyer, but I suppose so, yes, sir. But it would not be smart.

Senator GORE. I will let you consult with your staff on that if you want to elaborate on it.

Mr. TARLETON. The lawyers tell me, Senator, that under Section 315, broadcasters cannot—cannot—discriminate against candidates. So I would take that to mean that it would be against the law.

Senator GORE. Well, if it is a matter of proving that a broadcaster has failed to exercise an option when it is a judgment call all the way around, then it seems to me that the preemptible category offers an opportunity for real problems in a station's treatment of one candidate versus another.

But the real problem, of course, is the fact that political candidates attempting to gain access to the voters for the conduct of democracy—I mean, we sort of flinch a little bit thinking of 30 second commercials as the conduct of democracy, but it is. I mean, it just is. Candidates seeking access to the voters for that critical purpose in our Republic are competing against your long-time valued commercial customers who have now gone into the practice not of buying time on a fare card but, increasingly, the practice of entering into longer-term contracts, and here they are trying to buy time for 60 days and they are going to be gone November 9. You don't have to worry about them after that for another six years, or two years, or whatever, and they you have 60 days.

Well, if a contract period for a commercial customer includes that 60 day window plus the time after the election, then, again, there is opportunity for discrimination of a kind that is very difficult to detect against the political candidate compared to the commercial customer.

The disadvantage of having a preemptible spot during the heated period immediately before an election is completely different for a political candidate than it is for an advertiser who is in a market tomorrow and the next day and the next year and has a long-term relationship with your station.

And so, it seems to me that the legislation we are talking about here really would serve the public interest in allowing greater access by the candidates in both parties to the voters.

Do you know of any instances where a contract with a commercial advertiser has extended over the immediate preelection period and the immediate post-election period? That's fairly common.

Mr. TARLETON. There would be some, though not as many as one might think. More often than not, commercial advertisers are advertising in very, very short flights.

Senator GORE. Do you know of any instances where commercial rates are higher during the immediate period before an Election Day compared with the period after an Election Day?

Mr. TARLETON. Yes, sir, but that is a function of the marketplace and certainly not a function of 30 days or 60 days prior to an election. It is the difference between the third quarter and the beginning of the fourth quarter, and then the month of December, which usually goes into the pits.

Senator GORE. And so, a commercial buyer with a contract, let's say a 60 day contract that includes 30 days immediately prior to the election and 30 days immediately after the election, that commercial time buyer, on contract, faces an average cost that extends into the low rate period immediately after the election.

The political buyer, by contrast, is faced only with the high range of that.

Now, through this practice of contract buying over a long period of time, therefore, the commercial buyer is at an extreme advantage, compared to the political buyer attempting to gain access during that window immediately prior to the election.

Again, it seems to me that that is a reason for the legislation my colleague has introduced.

I have some other issues that I would like to explore, but I am sensitive to my late arrival and the fact that we are running short on time. So I will end it here, Mr. Chairman.

Thank you.

Senator INOUYE. Thank you, sir.

Senator McConnell.

Senator MCCONNELL. Thank you, Mr. Chairman.

I would mention to my friend from Tennessee that before he came here, I testified that about three-fourths of one percent of total advertising revenue for broadcasters in this country comes from political campaigns. Mr. Tarleton said he thought I might have been a little low and that it could be 1 percent to 4 percent. Then he testified in response to some of your questions and to some of Senator Danforth's questions that, given the insignificant percentage of the overall revenue, they would not dare consider cheating.

Yet, they are here today, testifying against a bill that affects only a tiny portion of their overall revenue, which would provide both simplicity and a genuine break for political advertisers.

I just really find that excessively greedy.

We are seeking to grapple with the costs of political campaigns in this country. Many of us believe that this would provide some significant relief for those who seek public office in this country.

Senator GORE. Well, this industry is on its way to the "poorhouse," isn't it? Isn't it on the ropes financially?

Senator MCCONNELL. Oh, yes. I tried to get some estimates of how these particular licenses have increased, and I understand there is great competition for broadcast licenses.

We all know that it is an extremely lucrative business. And we are asking here for really a very small sacrifice so that democracy can function better.

Thank you, MR. Chairman.

Senator INOUYE. Thank you.

Recently, the Center for Responsive Politics, a bipartisan research group, issued a report entitled "Beyond the 30 Second Spot." Among other things, this report indicated that spot ads were campaign staples.

The study indicated that there was an industry tendency to preempt spots, which led a majority of candidates to pay for higher, nonpreemptible slots.

The Center report said that this has helped undermine effectiveness of FCC's lowest unit rate rule for campaign ads.

Would you agree with that statement?

Mr. TARLETON. Senator, I missed it about mid-way through there. I don't think I understood the statement that you made.

Senator INOUYE. I am reading from the "Communications Daily," of September 14. It says, "The spot ad was a campaign staple, with only 12.7 percent of candidates reporting buys of 30 or 60 seconds." The study said, "Industry tendency to preempt spots led the majority of candidates"—this is the 1986 race—"to pay for higher, nonpreemptible slots." The Center said, "This has helped undermine the effectiveness of FCC's lowest unit rate rule for campaign ads."

Do you agree with this assessment?

Mr. TARLETON. Senator, I am at a disadvantage. I have seen part of that particular report. I got my hands on it last night.

I would agree that there have been preemptions in previous campaigns. Television stations were operating under what we thought were rules that established each preemptible level as a separate class. That has now, with the August notice, been clarified, and all preemptible rates now take the same class.

So I would suggest that there would be far fewer preemptions in 1988 than there might have been in 1986.

Senator INOUYE. I thank you very much, sir.

Mr. TARLETON. Thank you.

Senator INOUYE. Our final witness this morning is Mr. Robert Squier, of Squier/Eskew Communications of Washington, D. C.

Mr. Squier, welcome, sir.

STATEMENT OF ROBERT D. SQUIER, PARTNER, SQUIRE/ESKEW COMMUNICATIONS

Mr. SQUIER. Thank you, sir.

I have a very short opening statement, shorter than any of the others because I have been disciplined by the 30 and 60 second spots.

Television and radio are America's most important contemporary media of political communication. About this there is obviously no disagreement.

Problems, however, arise over how political candidates make use of our airwaves at election time. We have yet to devise a system that will provide substantial periods of free time for candidates to use to communicate with voters.

As a result, we must find ways to fit our political ideas into the time constraints normally used for product advertising and, of course, find the money to put this material on the air.

The airwaves are owned by the people and are licensed to broadcasters for their use.

As the system works now, we must rent our airwaves back from the broadcasters at election time in order to conduct this most important transaction of the democracy. Some propose that instead of requiring broadcasters to reduce or eliminate the cost of airtime, that we should, instead, tax the voters to pay the broadcasters for political time charges.

Imagine explaining to the American voter that we plan to increase their taxes in order to buy time from broadcast stations operating on the taxpayers' own airwaves.

Although our company specializes in political communications, Mr. Chairman, I hope you would pardon me if we don't line up for that account.

There are only two other available courses of action, it seems: lower or eliminate all charges for political broadcast time.

The latter is sufficiently difficult politically so that it is not under serious consideration at this time.

We tried the former, and it worked for a while. It is called "lowest unit rate." In its earliest use, it probably resulted in reducing the cost of political time by up to 30 percent. At the time, it elevated the political candidate from being the least favored to the most favored client, by law, of the broadcast station.

But broadcasters and their lawyers are not dumb, especially when dealing with the bottom line, and over the years, they have been able to chip away at this idea until now it provides virtually no cost relief for political communication.

The lowest unit rate in the real world of the broadcast marketplace is almost always the preemptible rate, which is exactly what it sounds like. If the broadcaster can sell your preemptible time slot for a higher rate, then your commercial can be bumped out of the time slot, your money returned, and your message eliminated.

Hence, most responsible political time buyers must resort, especially at the end of the campaign, to fixed rate availabilities.

Under the new FCC regulations, we see little relief. In fact, as we understand it, instead of being bumped out of the time slot altogether, the political client could now be given equivalent time.

When the political time buyer is trying to find that small percentage of the television audience that are probably voters and then inside that group some demographic group that they want to speak to specifically, the program "Alf," of course, does not equal "Sixty Minutes."

What we need is a new law that will make the lowest unit rate also a nonpreemptible rate for the political client. Then, once the political client's order is taken at the lowest unit rate, it cannot be eliminated or moved.

I am confident that broadcasters will eventually find their way around this idea, too. But, in the meantime, we might look forward to a few years of financial relief for America's campaign communications.

I also believe that we need much tougher and more professional regulation from the FCC, and I am tempted to go on about that a bit, but I am going to try to avoid any hint of partisanship here this morning.

I would like to compliment Mr. Milt Gross of the Compliance Division of the FCC. We have worked with him for so many years that probably neither one of us would like to admit exactly how many. He is absolutely the highest example of public servant imaginable. I think that he has the worst job in America this year, trying to deal with this problem.

If I had to do all of what I have said here in a ten second spot, I would say that if you are, in October, going to buy some television time as a political candidate, you have the choice between going to buy some fixed time from the broadcaster or going to the roulette table that the broadcaster offers you under the title of "preemptible rate."

Thank you for inviting me here today.

Senator INOUYE. Thank you.

Senator McConnell.

Senator MCCONNELL. Thank you very much, Mr. Squier.

On the average, in your experience in buying television time, what is the cost differential between preemptible and nonpreemptible time-- on the average, in this season that we are talking about here, the last 60 days?

Mr. SQUIER. The problem, of course, is that it is difficult to strike an average, although it was easy for the commercial broadcasters to strike an average of what it cost to buy television time.

Our experience is that it could be anywhere from 10 percent to 300 percent. Now that depends upon the time of year, where you are in the campaign, and what you are looking for in terms of the specific programming.

Senator MCCONNELL. Do you find that the higher percentages apply the closer to the election you get?

Mr. SQUIER. Oh, almost certainly, because you have that crowding taking place.

As the NAB testified just a minute ago, this period that we are in now is a period where there is enormous competition for time and, as a result, exactly what this bill seeks to do is really the problem.

If there were not so many customers in the marketplace looking for television time, then we would not have all of these preemptions. But the fact is that you would be malpracticing a political client if you went into October, for instance, an started buying at the preemptible rate.

I would imagine that the very classic television ad that was done in your last campaign, that ran at the very end—I think it was called "Hound Dogs II"—I would guess that that was not bought under the preemptible rate.

Senator MCCONNELL. We didn't even buy preemptible time with "Hound Dogs I," which ran in mid-September, because we are in a very precise business, as you and I both know. You really need to get what you pay for.

Mr. SQUIER. Exactly.

Senator MCCONNELL. Bob, if you have some sense, what kind of relief would my bill provide campaigns? If you could get fixed time at the lowest unit rate during these periods that we are talking about, 45 days before the primary and 60 days before the general election, do you have some sense, from your buying experience, what kind of relief we are talking about here?

Mr. SQUIER. I have the advantage here of being one of the small group of people that came up with this idea of lowest unit rate the first time, and I guess we did not have enough imagination to figure out how to make it work forever.

It seems to me that what the legislation would do would be to finally make law what the original intent of lowest unit rate was. In terms of what it would mean in basically taking money out of the political system, which we are all trying to do, it could be millions and millions of dollars in October.

Senator MCCONNELL. How that converts to our lives around here, those of us who seek public office—there are a lot of complaints, as you know, about the time involved in raising money, and you have followed closely, of course, the arguments that we have had over whether we ought to cap spending or do something else—my own view is that we should have looked at the cost of campaigns. Clearly, the lion's share of the cost, in spite of the NAB study that said only 34 percent of the money we are spending on campaigns is going to TV, is going there.

Do you go agree with my assessment that the only way they could have come up with that figure was to include everything, all of the non-contested races? Do you share my view that that is an absurd figure?

Mr. SQUIER. It is an absolutely absurd figure.

As a matter of fact, when I was reading that testimony before it was given, I circled that number and said that I thought that number probably would not fly before this panel since everyone here has had to raise the money to pay for that broadcast time.

We are talking, generally, 60 percent in a contested race.

Senator MCCONNELL. In a contested race, yes, 60 percent.

Mr. SQUIER. If you lump together all the House races where there are no opponents and the Senate races where there are virtually no opponents, of course you can then begin to bring that number down.

But what we are talking about is exactly what you said earlier, and that is what does it take in order to change a seat in the Senate. In those contested races, you are talking about budgets that go to 60 percent.

You raised a very interesting question, too, in terms of the money. I think all of us in politics know that it is not only the amount of money that bothers all of us, but it is where one has to go for the money. Almost always, one has to go at the end of campaigns to places where they would rather not go. That is a fact of politics.

And so, we have here coming together this problem in October, which is really on the supply side and on the other side. In order to pay these fixed rates, which are enormous in October, one is going to have to go out and raise money from places—and I am speaking of both parties—that people just do not want to go to in order to raise that kind of money.

So, I think, in addition to cleaning up the regulation and taking a lot of money out of the system, that also is going to help us prevent bad money from getting into the system.

Senator MCCONNELL. Absolutely.

You know, this is one of those areas where it seems to me we can agree. We have terrible fights in this body over campaign finance because we have very different views about who benefits, depending on how you craft the rules.

But it seems to me that this is an area where we might be able to get broad, bipartisan support, an area that would provide, according to your testimony, at least, significant relief from the escalating cost of campaigns.

I am hoping that we can get this measure passed.

Mr. SQUIER. I would say in response to that that it seems to me broadcasters, because these are the people's airwaves, have some responsibility here. I tried to allude to that in my testimony.

This seems to me the most reasonable way to go about that problem. I mean, what we are basically talking about is fairness. We are trying to return the political time buyer, the political purchaser of time, back to being a good customer of the station, rather than the customer of the station that gets the worst deal in the marketplace.

There are obviously other ways to do this. It seems to me possible that every time a broadcast station changes hands, we might be able to tax that exchange at, say, what, the rate of 25 percent, for example, and easily come up with the amount of money that it would take to pay broadcasters a fixed rate, if that is the way they would prefer to do this.

But it seems to me that this legislation has the advantage of dealing with the problem at the point of sale of the television time, not at the point of sale of the broadcast station.

Senator McCONNELL. Finally, at the risk of being redundant, I wonder if you share my view that it seems to be excessively greedy to be in here testifying against a bill that affects such a miniscule portion of the overall advertising revenue from this industry.

Mr. SQUIER. I agree with you completely.

I cannot conceive of commercial broadcasters thinking they are in a win position by making the case for that relatively small amount of money.

Senator McCONNELL. Thank you very much, Mr. Chairman.

Senator INOUYE. Senator Danforth.

Senator DANFORTH. Mr. Squier, we have had a dispute on facts between the FCC and the broadcasters, represented by Mr. Tarleton, on how common the use of fixed rates are for commercial advertisers.

The FCC says that fixed rate spots are frequently offered to political candidates only and that at the beginning of an election period they publish what are known as political rate cards.

On the other hand, Mr. Tarleton said that no, fixed rates are offered to everybody and that he thought it was pretty common that they were sold to everybody.

Do you have a judgment as to the frequency of the sale of the fixed rate to political candidates, as opposed to commercial advertisers?

Mr. SQUIER. We buy only political time, so we would have to make the estimates of product time on the basis of how it looks to us from the other side. But it is very simple to state what is happening in political campaigns.

The closer you get to the election, the more you have to turn to fixed rates. I am not surprised that your time buying, even for spots as early as you are referring to, Senator, would be at the fixed rate. If you want that spot to run, and it has to run in that period, then it must run as fixed, or you stand the chance of not having it run at all.

One of the things we are finding now is unusual returns of money in some campaigns after the election. In other words, in situations where we thought we were in pretty good shape, when we were trying to buy preemptible time, suddenly we find at the end of a campaign that money is returned—which we, in turn return to the candidates—because these spots that we had every reason to believe were going to run just simply did not run. They got bumped at the last minute.

This makes us obviously all the more intent on making sure that they run, and, therefore, we are forced more and more to fixed rates.

So fixed rate is moving at a geometric progression in terms of responsible time buys for political campaigns.

Senator DANFORTH. I don't want to ask you for your own business decisions, but do you have a judgment as to what percentage of political commercials are bought at fixed rates?

Mr. SQUIER. Well, all of them in October in our company will be at fixed rates, unless this legislation gives us some relief. That means, you know, 90-plus percent.

I would say this season that you have more than ever in the past, and I would guess we are talking about, if we could project through to the end of this year, probably 70 or 75 percent.

Senator MCCONNELL. Because of the enormous clutter as a result of the presidential race, right?

Mr. SQUIER. The presidential race and buyers in the market, the complication of the Olympics and the World Series—there are a lot of things operating this year that are going to bring this to a head.

Senator DANFORTH. What would you say would be the case with commercial advertisers?

Mr. SQUIER. That's tough for me to judge, and I think you would have to ask a commercial advertiser.

But I would think this year, because of the pressure with the presidential election and other customers in the marketplace, that the fixed rate might be greater than normal for them, but still not anywhere near what it was.

Senator DANFORTH. Greater than normal. But it would still be much greater, wouldn't it, for the political advertisers than the commercial advertisers?

Mr. SQUIER. Oh, absolutely. The the commercial advertiser misses out in that October window. They are going to get make-goods starting the day after the election, and those make-goods are going to be very valuable to them. They do not have a fixed election. Their election takes place every time the customer goes to try to make a purchase.

We have one fixed "purchase day,' and that is Election Day.

Senator DANFORTH. Do you think it would be possible for a television station to put its thumb on the scale of the election by the kind of thing that both Senator Gore and I have suggested, namely, somebody who is a good candidate or a preferred person or a preferred advertiser gets an assurance that he is not going to be preempted and another one, who is not so preferred, does not get that assurance, and, in fact, gets really threats that they will be preempted?

Mr. SQUIER. Absolutely.

I don't want to give you any more nightmares than you already have about this. You have talked this morning about the possibility of a person who owns a station, wanting somehow to affect this process. But every single person in that chain that goes down all the way to the person who is in the transaction could do the same thing.

You might have a time sales person at the station who has a political ax to grind and, with a wink and a nod, cuts a deal with a time purchaser for a political candidate, in which you have one person asking the question how safe am I with this particular class of preemptible time, and the answer is, you know, I think you'd better go with a fixed rate because this is going to be bump and run in this time period. Then he turns to the other candidate, who is a candidate that particular person might be friendly to, and says you are going to be safe with P-3 here.

You could have a situation where one candidate is paying twice as much for the same time.

There are a lot of dangers in this chain and a lot of dangers in the transactions that take place here. The other good thing about this legislation is that it seems to me you make Mr. Gross' job very easy because you eliminate all of those dangers. You take those temptations away from all those people once you make these things fixed.

Senator DANFORTH. Would there be a great threat to the loss of a license by doing that, as was justified by Mr. Tarleton?

Mr. SQUIER. I understand his argument and I respect him and his station. We have bought time from that station and he is obviously what he says he is as a broadcaster.

But I think it is realistic to assume that that would be a very difficult case to prove. We don't take licenses away from people in this country. I think you could almost say that with a period at the end of the sentence. As a result, it seems to me that there would be an awful lot of opportunities for something to take place that even the manager might not know about.

Senator DANFORTH. And the proof might be the expression on somebody's face, right?

Mr. SQUIER. Absolutely.

I can imagine, you know, the company picnic where the owner of the station is talking to the time salesman of the station—that manager may not ever be in that conversation—and he says to the time salesman boy, Candidate X is really a fine American, and I know there is not anything we can do for that person, but, boy, if there were ever a chance for us to help him, I certainly am contributing my money to that campaign, and I hope we give him every single opportunity; I would not like to see anything that took place in our station injure that candidacy in any way.

Now, nothing was said in that conversation that could not be played over their television station. And yet, I am sure if that time salesman ever wanted to be the manager of his department, or maybe even assistant general manager of the station some day, he might understand that he ought to look at that candidate's requests very carefully.

Senator DANFORTH. Thank you.

Senator INOUYE. Senator Gore.

Senator GORE. Thank you, Mr. Chairman.

I certainly enjoyed your testimony, Mr. Squier.

I think it is worth emphasizing that the legislation we are considering here and the idea it embodies would not be of benefit to Republicans versus Democrats, or Democrats at the expense of Republicans.

You work exclusively for Democratic candidates and Senator McConnell works exclusively for Republican candidates, including himself. There is no partisan advantage to this.

Similarly, there is no advantage for incumbents versus challengers. Quite to the contrary, the advantage is to challengers if a law lowers the entry barrier to challenge an incumbent.

Mr. SQUIER. Correct.

Senator GORE. So the perception that this legislation is somehow of particular benefit to Senators and Congressmen who consider it is simply not valid. We have an opportunity to see the problems in the electoral process. There is too much money in the electoral process. There is too much fund raising in the electoral process. And in any race where the competition is keen, as you said in your testimony, 55 to 60 percent of all the money raised and spent is going to go for purchasing time on the public airwaves.

As you also put it, I sincerely thought very well, there are two ideas for dealing with it. Either make the time free or lower the cost of the time.

Now I have long favored the idea of making a certain amount of time free as a condition of a license to use the public airwaves.

But, as you note in your testimony, that idea is not political viable right now and maybe never. I like that idea, but it is not viable.

And so, we are left with the second option: lowering the cost of the time. And it is, after all, the public's time to begin with.

We tried to lower the cost of the time with the law now on the books which provides, ostensibly, the lowest available rate. But, as the witnesses have told us, that law does not work now. The broadcasters, because they are naturally looking for higher profits, a noble objective, it makes our whole system run, over the years, that pursuit has led them to a variety of devices for undercutting the lowest available rate idea, which no longer works.

Is that a fair statement, that it no longer works? It may, in the early days of a campaign, still provide some savings to candidates in both parties. But in the contested races, it is no longer meaningful, is it?

Mr. SQUIER. The memorial service for lowest unit rate was held years ago, Senator.

Senator GORE. And the principal reason why is the introduction of this idea of preemptibility, as it affects rates. And, as you have testified, the preemptibility is completely different as it applies to a political candidate as compared, say, to a maker of dog food. You would not have experience in that area. But political candidates would look at preemptibility as something they have to avoid at election time.

Mr. SQUIER. At the peril of their position.

Senator GORE. Right.

Mr. SQUIER. If you get preempted out of the last five days of your advertising—suppose you place advertising for seven days and the last five days you are preempted and your opponent is buying at fixed rate and you are at a preempted rate, and you think you are all right. You might end up being able to give a considerable amount of money back to your contributors and then go back into private life with them.

Senator GORE. Well, the objective is to make it easier for incumbents and challengers alike, in both political parties, to have an expanded dialogue with the voters in a competitive environment, while at the same time facing less pressure to raise more and more money for political campaigns with the risks and abuses attendant to that process.

So the public interest, it seems to me, requires this.

Did you want to add something?

Mr. SQUIER. I just want to say, in terms of the money we are talking about here, we have talked always about what percent of the income of broadcasters this represents. This, obviously, is a very small amount. But in terms of candidates and what they have to raise, what we are talking about is an enormous amount of money, which is getting bigger and bigger every year.

Yesterday we looked at a market going from 1981 to 1988 and found that there was a 300 percent increase in the cost of television time in that particular market. So, what we are talking about here is not only not a very large percentage of money, but is a small percentage of increased profits that broadcasters are now taking.

Senator GORE. Thank you very much.

Thank you, MR. Chairman.

Senator INOUYE. Thank you.

Mr. Squier, you have answered all of my questions, but I would just like to make an observation because I thought it not only interesting but rather profound. It is this. You believe that in October, some candidates may find it necessary to seek funds, campaign funds, from sources that are less than savory.

Mr. SQUIER. It seems to me that it is a matter of concern, that, as you go through a political campaign, the easy money is always the money that comes first into your campaign. It is from people that really have interest in good government and in a friend's candidacy. And, as you get closer and closer to election day, the kinds of places that some candidates have to go to get the money to run on television in October are the places they did not want to go to at the beginning of the campaign.

Senator INOUYE. I think all of us should keep that in mind as we consider this measure.

As Chairman of this committee, I will do my best to have this matter considered in our committee's final markup day, which is next Tuesday. But I think we should note, as a general practice, that these matters should have been considered about a month before the Executive Session.

I would like to assure the author, Senator McConnell, that I will do my best to have this matter taken up next Tuesday.

But don't hold your breath on it.

Senator MCCONNELL. Mr. Chairman, I just want to thank you for scheduling this hearing and for sitting here during all of it and for your effort next Tuesday. I really very much appreciate it.

Senator INOUYE. I thank you very much, Mr. Squier.

Mr. SQUIER. Thank you.

Senator INOUYE. The hearing is adjourned.

[Whereupon, at 11:50 a.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

○